899.

SUPREME COURT OF THE UNITED STATES.

No. 225.

CHARLES BISPHAM, APPELLANT,

vs.

ELI K. PRICE, EXECUTOR OF JOSEPH ARCHER, DECEASED.

APPEAL FROM THE CIRCUIT COURT, UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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[GIDEON, print.]

Sup. Ct.

900.

In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit of April session, 1850, No. 105, in equity.

Docket entries.

B. Gerhard.	CHARLES BISPHAM, a citizen of the State of New Jersey, vs. ELI K. PRICE, a citizen of the State of Pennsylvania, and the executor of the last will and testament of Joseph Archer, deceased.	105.	In equity.
Miles.			

1850. July 16.	Bill filed, and subpœna exit, returnable on the first Monday of September next.
1850. July 16.	Subpœna returned, "service accepted."
1850. Nov. 23.	Defendant's answer, filed.
1850. Nov. 23.	Exceptions to answer, filed.
1851. April 14.	And now, to wit, 14 April, 1851, on motion of B. Gerhard, esq., for the complainant, the court order so much of the answer as prays the benefit of a demurrer to be stricken out.
1851. April 15.	Replication of complainant, filed.
1851. April 29.	Agreement as to evidence, filed.
1851. April 29.	Agreement for hearing, filed.
1851. Sept. 10.	Opinion of the court, filed.
1851. Sept. 10.	And now, this tenth day of September, A. D. 1851, this cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, that the bill of the complainant be dismissed, with costs.
1851. Dec. 30.	Appeal from the decree of the court, on the part of the complainant, entered, and allowed.
1852. Jan. 3.	Bond on appeal approved and filed.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, sct.

I certify the foregoing to be a true and faithful transcript from the docket entries in the above case.

Witness my hand and the seal of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, at Philadelphia, this seventh day of February, A. D. 1852, and in the seventy-sixth year of the independence of the said United States.

GEORGE PLITT,
Clerk circuit court.

Pleas before the honorable the judges of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, of April session, 1850. No. 105. In equity.

It is thus contained—

Be it remembered, that heretofore, to wit, on the sixteenth day of July, in the year of our Lord one thousand eight hundred and fifty, Charles Bispham, citizen of the State of New Jersey, by his solicitor, Benjamin Gerhard, esq., filed of record, in the said court, his bill of complaint against Eli K. Price, a citizen of the State of Pennsylvania, and the executor of the last will and testament of Joseph Archer, deceased; which bill of complaint is in the words and of the tenor following, to wit:

To the judges of the circuit court of the United States, for the eastern district of Pennsylvania, sitting in equity.

Charles Bispham, of Mount Holly, in the State of New Jersey, and a citizen of the State of New Jersey, brings this his bill of complaint against Eli K. Price, esquire, of the city of Philadelphia, a citizen of the State of Pennsylvania, and the executor of the last will and testament of Joseph Archer, deceased.

And thereupon your orator complains and says, that the said Joseph Archer, late of the city of Philadelphia, merchant, deceased, at the time of his death, hereinafter mentioned, was a citizen of the State of Pennsylvania, and was then possessed of certain personal estate to a great amount and value, and being so possessed thereof, the said Joseph Archer duly made and published his last will and testament, bearing date the 13th day of September, anno domini 1841. And the said testator thereby appointed a certain Charles Taylor and your orator, executors thereof, and the said testator did thereby direct that if either of them, the said Charles Taylor or your orator, should die, or renounce his said office, that then the said defendant, Eli K. Price, should be an executor of the said last will and testament in place of the party so dying or renouncing.

And your orator further shows, that the said testator died on or about the 28th day of September, anno domini 1841, without in any wise revoking or altering his said will.

And your orator further shows, that the said Charles Taylor, by an instrument of writing bearing date the first day of October, A. D. 1841, filed in the office of the register of wills, for the city and county of Philadelphia, renounced his said executorship; the said last will and testament having there been duly proved, and the said defendant having made the requisite official oath or affirmation on the first day of October, A. D 1841, and your orator on the fifth day of October, A. D. 1841, letters testamentary thereon were thereupon duly issued by the said register of wills, to the said defendant, Eli K. Price, and your orator, who then assumed the duties thereby devolved upon them.

And your orator further shows, that on the 25th day of February, A.

D. 1843, on the petition of your orator, the orphan's court, for the city and county of Philadelphia, discharged from his said office as executor as aforesaid, on his stating an account, so far as he and the said defendant, Eli K. Price, had jointly administered the estate so as aforesaid committed to them, and on your orator's surrendering the remainder of the property in his hands to the said defendant, who then and thereby became, and is now, the sole legal representative of the said testator.

And your orator further shows that by virtue thereof the said defendant, Eli K. Price, hath long since become possessed of, and hath continued, and still is, in the possession of the said remainder of the said personal estate of the said testator to a great amount, to wit, to an amount much more than sufficient to pay and satisfy the demand and claim of your orator hereinafter set forth.

And your orator further shows, that for a certain period prior to the eighteenth day of November, A. D. 1835, your orator and the said Joseph Archer were co-partners [in] said business, as merchants, under the firm of Archer & Bispham, and that as such co-partners they had various and extensive accounts together. That before the said last mentioned day, the said firm of Archer & Bispham had expired, and after the said expiration, but also before the said last mentioned day, a certain agreement was made by and between the said co-partners, and signed by the said Joseph Archer, at Canton, on the twenty-ninth day of April, A. D. 1834, and by your orator, at Valparaiso, on the fifteenth day of November, A. D. 1834; the original of which said agreement your orator avers is in the possession of the said defendant, whereby a certain William Foster was appointed the joint agent of the said Joseph Archer and your orator to settle all accounts between them. That by virtue of the said agreement the said William Foster made a certain settlement of the said accounts bearing date the eighteenth day of November, A. D. 1835, the said Joseph Archer being at that time in the city of Philadelphia, the place where the said settlement was made; and your orator being at the same time at Valparaiso. A true and literal copy of which said settlement, marked exhibit A, is hereto annexed, which your orator prays may be taken as a part of this bill.

And your orator further shows, that the said settlement, though dated the 18th day of November, A. D. 1835, was really made on or before the 16th day of November, 1835, as will appear by a certain letter addressed to your orator by the said Joseph Archer, from the said city of Philadelphia, on the last mentioned day. A true and literal copy whereof is hereto annexed, marked exhibit B, which your orator prays may be taken as a part of this bill.

And your orator further shows, that on the 19th of November, A. D. 1835, the said Joseph Archer signed and delivered to your orator a certain paper writing, relating to the said settlement of the said accounts. A true and literal copy of which said paper, marked exhibit C, is hereto annexed, which your orator prays may be taken as part of this bill.

And your orator further shows, that the said Joseph Archer also ad-

dressed to your orator a letter, dated Manchester, December 17, 1835, upon the subject of the said settlement. A true and literal copy of which said last mentioned letter, marked exhibit D, is hereto annexed, which your orator prays may be taken as part of this bill.

And your orator further shows, that he confirmed the said settlement by a letter addressed by himself to the said Joseph Archer, dated Valparaiso, August 18, 1837. A true and literal copy of which said last mentioned letter, marked exhibit E, is hereto annexed, which your orator prays may be taken as a part of this bill.

And your orator further shows, that by the said settlement of the said accounts, your orator was charged with the sum $10,882 93, the same being stated as his half of an obligation incurred by the said Joseph Archer in his individual name, but really on account of the said firm of Archer & Bispham, as a surety on certain custom-house bonds given to the United States of America, for duties due from a certain James L. Mifflin, and that it was thereby assumed, that the said bonds could be enforced by the said United States of America against the said Joseph Archer, to the whole extent of his then apparent liability on the same, to wit, to the extent of $21,765 87.

And your orator further shows, that neither the said Joseph Archer in his lifetime, nor any one representing him, or his estate since his death, ever paid the amount of his, the said Joseph Archer's apparent liability to the said the United States of America, nor any part thereof, nor any sum or sums on account of any of the said bonds, except on one which is described first in order, in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bond, on which Archer & Bispham are liable," on which said last mentioned bond the said William Foster was jointly liable with the said Joseph Archer, and which became due on the twelfth day of February, A. D. 1829, and was conditioned for the payment of $2,297 00. That on the said last mentioned bond suit was brought in the district court of the United States, in and for the eastern district of Pennsylvania, by the said the United States of America, against the said Joseph Archer, as of February sessions, 1829, No. 75. And it was so proceeded in said suit, that afterwards judgment was recovered by the said the United States of America against the said defendant therein, Joseph Archer, on the 16th day of February, A. D. 1829. And afterwards, the said the United States of America sued out of the said last mentioned court a writ of scire facias, to February sessions, A. D. 1843, No. 16, on the said last mentioned judgment against the said defendant, Eli K. Price, and your orator as executors as aforesaid of the said last will and testament of the said Joseph Archer. That the marshal of the said eastern district of Pennsylvania returned the said writ "made known" as to the said defendant, Eli K. Price, and "non est inventus" as to your orator. And the said defendant, Eli K. Price, having appeared to, and defended the said last mentioned suit, it was so proceeded therein, that afterwards, to wit, on the twenty-third day of May, A. D. 1843, a jury impannelled to try the said cause, did find a verdict for the said

the United States of America against the said defendant, Eli K. Price, as executor as aforesaid, for the sum of three thousand eight hundred and twenty-nine $\frac{87}{100}$ dollars for their debt, besides six cents cost, subject to any deduction which the court might thereafter make, and subject also to the opinion of the court on the facts given in evidence.

That afterwards, by order of the district attorney of the United States for the said district, filed of record on the 13th day of January, A. D. 1845, credit was given on said judgment for the sum of $3,000, paid on said bond to the collector of the port of Philadelphia, on the 25th day of September, A. D. 1843.

And your orator further shows, that afterwards, to wit, on the seventh day of May, A. D. 1850, the said last mentioned judgment was marked "satisfied," by order of the said district attorney of the United States for the said district. All which proceedings in the said last mentioned suit, in the district court of the United States, for the said eastern district of Pennsylvania, will at large appear by a reference to the records of said court.

And your orator further shows, that during the year 1829, and during the lifetime of the said Joseph Archer, the said the United States of America brought suit at law in the district court of the United States, in and for the eastern district of Pennsylvania, against the said James L. Mifflin, and the said William Foster, and the said Joseph Archer, on each of the three of the said custom-house bonds, (each thereof being a bond wherein the said Joseph Archer, and the said William Foster were jointly and severally bound to the said the United States of America, with, and as sureties of, the said James L. Mifflin,) described the second, fourth, and ninth in order in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds, for which Archer and Bispham are liable." That it was so proceeded on in each of the said suits, that the said the United States of America recovered judgment on the eighteenth day of May, A. D. 1829, on two of the said bonds in the said suits thereon against the defendants therein, to wit, the said James L. Miffln, William Foster, and Joseph Archer, jointly for the respective amount of the said bonds, together with interest thereon to the day of judgment. And on the sixteenth day of November, A. D. 1829, on the remaining one other of the said bonds in the said suit thereon against the said defendants therein, to wit, the said James L. Mifflin, William Foster, and Joseph Archer, jointly for the amount of the said last mentioned bond, together with interest thereon to the day of judgment.

And your orator further shows, that in the same year, and in the same court, and during the lifetime of the said Joseph Archer, the said the United States of America brought suit at law against the said James L. Mifflin and the said Joseph Archer, on each of the remaining five of the said custom-house bonds, being those wherein the said Joseph Archer was bound, jointly and severally, to the said the United States of America, with and as surety of the said James L. Mifflin, without any other surety, described the third, fifth, sixth, seventh, and eighth,

in order in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds for which Archer and Bispham are liable." That it was so proceeded on in each of the said last mentioned suits, that the said the United States of America recovered judgment on the eighteenth day of May, A. D. 1829, on one of the said last mentioned five bonds in the said suits thereon against the defendants therein, to wit, James L. Mifflin and Joseph Archer, jointly, for the amount of the said bonds, with interest to the day of the judgment. And on the twenty-fifth day of August, A. D. 1829, on the remaining four of the said last mentioned five bonds in the said suits thereon, against the said defendants therein, to wit, the said James L. Mifflin and the said Joseph Archer, jointly, for the amount of each of the said last mentioned four bonds, together with interest thereon to the day of judgment. All of which said suits and proceedings in the said district court of the United States, for the eastern district of Pennsylvania, will appear at large by reference to the records of said last mentioned court.

And your orator avers, that the said James L. Mifflin is still living, and that by the death of the said Joseph Archer, as heretofore shown on the twenty-eighth day of September, A. D. 1841, leaving the said James L. Mifflin him (the said Joseph Archer) surviving, his, the said Joseph Archer's estate, and assets in the hands of his representatives, became, and thereby were discharged from any liability, which the said Joseph Archer was under to the said the United States of America during his lifetime, for or by reason of the said judgments so as aforesaid recovered on the last mentioned eight custom-house bonds, and in consequence thereof, for or by reason of the said last mentioned eight custom-house bonds.

And your orator further avers that the said defendant, Eli K. Price, as executor of the said last will and testament of the said Joseph Archer, has at all times since the said death of the said Joseph Archer, claimed, and does now claim, in consequence thereof, to hold the said estate of the said Joseph Archer, and the assets in his, the said defendant, Eli K. Price's, hands, as executor as aforesaid, discharged of and from all liability to the said the United States of America, for or by reason of the judgments so as aforesaid recovered on the said last mentioned eight custom-house bonds, and for or by reason of the said last mentioned eight custom-house bonds.

And your orator further shows, that the said the United States of America filed their bill of equity in this honorable court, as of October sessions, 1843, No. 3, against the said defendant, Eli K. Price, as executor of the said last will and testament of the said Joseph Archer, and also against your orator, wherein the said the United States of America claimed to recover from the estate of the said Joseph Archer the amount of three of the said last mentioned eight custom-house bonds, being three of those wherein the said Joseph Archer was jointly and severally bound with the said William Foster, as surety of and with the said James L. Mifflin, and which said last mentioned three bonds are described the second, fourth, and ninth in order, in that part of

exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds for which Archer and Bispham are liable."

And the said defendant, Eli K. Price, who had been duly served with process therein, appeared to the said last mentioned suit and filed his answer thereto, but your orator was not served with process therein; and afterwards, the said suit was heard on the said bill, and on the said answer thereto of the said defendant, Eli K. Price. And this honorable court decreed in favor of the said defendant, Eli K. Price, and dismissed the said bill. That afterwards, the said the United States of America entered an appeal to the Supreme Court of the United States from the said decree of this honorable court, and it was so proceeded on the said appeal that afterwards, to wit, on the first Monday of the term of December, A. D. 1849, the said the Supreme Court of the United States affirmed the said last mentioned decree of this honorable court.

And your orator further shows, that the said the United States of America filed their certain bill in equity in this honorable court as of October sessions, 1843, No. 4, against the said defendant, Eli K. Price, as executor of the said last will and testament of the said Joseph Archer, and also against your orator, wherein the said the United States of America claimed to recover from the estate of the said Joseph Archer the amount of the remaining five of the said last mentioned eight custom-house bonds, being those wherein the said Joseph Archer was jointly and severally bound with and as surety of the said James L. Mifflin, without any other surety, and which are described the third, fifth, sixth, seventh, and eighth in order, in that part of exhibit A hereto annexed, entitled "statement of J. L. Mifflin's bonds, for which Archer and Bispham are liable." And the said defendant, Eli K. Price, who had been duly served with process therein, appeared to the said last mentioned suit, and filed his answer thereto, but your orator was not served with process therein; and afterwards the said last mentioned suit was heard on the said bill, and on the said answer thereto of the said defendant, Eli K. Price, and this honorable court decreed in favor of the said defendant, Eli K. Price, and dismissed the said last mentioned bill.

And afterwards the said the United States of America entered an appeal to the Supreme Court of the United States of America from the said last mentioned decree of this honorable court, and it was so proceeded on the said last mentioned appeal, that afterwards to wit, on the first Monday of the term of December, 1849, the said the Supreme Court of the United States affirmed the said last mentioned decree of this honorable court. All which said last mentioned suits in equity, and proceedings in this honorable court, will appear at large by a reference to the records of this honorable court.

And your orator further shows, that the said settlement of the said accounts between the said Joseph Archer and your orator, so as aforesaid made by the said William Foster, was made expressly, and by its express terms, in liquidation and full settlement between them of all matters, claims, and demands, relating to, or growing out of, their (Archer & Bispham) late firm, so far as they were "known, ascertained,

or believed to exist" at the time of the said settlement; but it was expressly declared as a part of the terms thereof, that as liabilities might thereafter be established or ascertained, or claims received not then known to exist, growing out of transactions during the partnership (of Archer & Bispham) for partnership account, that it was understood and agreed that the same were not embraced within the settlement of the said accounts. But your orator avers that no liabilities have [been] established or ascertained growing out of transactions during the said partnership (of Archer & Bispham) for partnership accounts, or any payments made on account of the same, other than those known to exist at the time of the said settlement of the accounts of the said Joseph Archer and your orator by the said William Foster.

And your orator further avers, that no claims have been received by your orator growing out of transactions during the partnership of Archer & Bispham, for partnership account as aforesaid.

And your orator further shows, that the moiety of the said sum of $21,765 87, so as aforesaid assumed in the said settlement as a positive liability of the said Joseph Archer on his and your orator's joint account, to wit, on account of the herein before mentioned custom house bonds, was retained by him, the said Joseph Archer, out of your orator's share of the said partnership balance, appearing by the said settlement of the accounts of the said firm of Archer & Bispham, to meet your orator's share of the said supposed and assumed liability, but that by the herein before mentioned premises, and by the herein before recited decisions of the herein before mentioned courts, the said defendant, as executor of the said last will and testament of the said Joseph Archer, and the estate of the said testator, was declared and finally decreed to be discharged of and from all liability in regard to the last mentioned eight of the said custom-house bonds.

And your orator avers that neither the said Joseph Archer in his lifetime, nor any one representing him or his estate, has since his death paid any part of the said sum of $21,765 87, except so much as was paid on account of the judgment so as aforesaid obtained by the said the United States of America, on the said custom-house bond, described first in order in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds for which Archer and Bispham are liable," and which said judgment was satisfied as has been herein stated. And your orator charges, that by the premises aforesaid an equity has arisen on his behalf to demand and have back from the said defendant the balance of the said moiety of the said sum of $21,765 87, to wit, the sum of $10,882 93, with lawful interest thereon, after deeucting therefrom one-half of any such sum or sums as aforesaid as the said Joseph Archer in his lifetime, or any one representing him or his estate since his death, has become bound to pay, or has lawfully paid, on account of said custom-house bond, described first in order in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds for which Archer and Bispham are liable."

And your orator avers that your orator has frequently, in a friendly

way, applied to the said Eli K. Price, executor as aforesaid, to pay to your orator such balance as aforesaid of the said sum of $10,882 93, with lawful interest thereon; but the said defendant has declined to accede to the said request of your orator, denying your orator's right to insist on the same.

To the end, therefore, that the said defendant, Eli K. Price, may, if he can, show why your orator should not have the relief hereby prayed, and may, upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories herein before numbered and set forth, as by the note hereunder written he is required to answer, that is to say—

1st. Whether the said Joseph Archer did not make and publish his said last will and testament on the 13th day of September, A. D. 1841, or on any other and what day, and whether the said Joseph Archer did not thereby appoint a certain Charles Taylor and your orator executors thereof?

2d. Whether the said Joseph Archer did not, by his said last will and testament, direct that if either of them, the said Charles Taylor or your orator, should die or renounce his said office of executor, that then the said defendant, Eli K. Price, should be an executor of the said last will and testament, in place of the party so dying or renouncing?

3d. Whether the said Joseph Archer did not die on or about the 28th day of September, A. D. 1841, or on any other, and what day, without in any wise altering or revoking his said last will and testament?

4th. Whether the said Charles Taylor did not, by an instrument of writing bearing date the 1st day of October, A. D. 1841, or on any other and what day, and filed in the office of register of wills for the city and county of Philadelphia, renounce his said executorship of the said last will and testament of the said Joseph Archer?

5th. Whether the said last will and testament was not duly proved. And whether the said defendant, Eli K. Price, did not make the requisite official oath or affirmation on the first day of October, A. D. 1841, or on any other and what day, and whether your orator did not make the requisite official oath or affirmation on the fifth day of October, A. D. 1841, or on any other and what day; and whether letters testamentary, on the said last will and testament, were not duly issued by the said register of wills to the said defendant, Eli K. Price, and your orator.

6th. Whether the said defendant, Eli K. Price, and your orator did not assume the duties devolved upon them by the said last will and testament, and by the said letters testamentary so as aforesaid issued thereon by the said register of wills?

7th. Whether the orphan's court for the city and county of Philadelphia did not, on the 25th day of February, A. D. 1843, or on any other and what day, on the petition of your orator, discharge your orator from his said office as executor as aforesaid, on your orator's stating an account, so far as he and the said defendant, Eli K. Price, had jointly administered the estate of the said Joseph Archer, so as

aforesaid committed to them, and surrendering the remainder of the property belonging to the said estate, in his hands, to the said defendant, Eli K. Price?

8th. Whether the said defendant, Eli K. Price, did not then and thereby become, and whether he is not now, the sole legal representative of the said Joseph Archer, and whether the said defendant, Eli K. Price, as such sole representative as aforesaid, did not become, and hath not continued to be, and is not now, possessed of personal estate of the said Joseph Archer, to any and what amount; and whether the amount of the said personal estate of the said Joseph Archer, now in his hands as such sole representative as aforesaid, is not more than sufficient to satisfy the aforesaid demand and claim of your orator?

9th. Whether your orator and the said Joseph Archer were not from any, and what, period of time prior to the 18th day of November, A. D. 1835, co-partners in business as merchants, under the firm of Archer & Bispham; and whether, as such co-partners, they had not various and extensive accounts together?

10th. Whether, before the said 18th day of November, A. D. 1835, the said firm of Archer & Bispham had not expired; and whether, after the said expiration, but before the said eighteenth day of November, A. D. 1835, a certain agreement was not made by and between your orator and the said Joseph Archer, whereby a certain William Foster was appointed the joint agent of your orator and the said Joseph Archer to settle all accounts between them; and whether the said agreement was not signed by the said Joseph Archer at Canton, or at any other and what place, on the twenty-ninth day of April, A. D. 1834, or on any other and what day, and by your orator at Valparaiso, or at any other and what place, on the fifteenth day of November, A. D. 1834, or on any other and what day; and whether the original of the said agreement is not in the possession of, or under the control of, the said defendant; and if not in the possession of, or under the control of, the said defendant, then in whose possession, and under whose control, is the original of the said agreement?

11th. Whether the said William Foster did not, by virtue of the said agreement, make a certain settlement of the said accounts between the said Joseph Archer and your orator, bearing date the 18th day of November, A. D. 1835, or any other and what date; and whether, at the time of said settlement, the said Joseph Archer was not at the city of Philadelphia, the place where the said settlement was made; and whether your orator was not at Valparaiso, or at any other and what place was the said Joseph Archer, or at any other and what place was your orator; and whether the paper marked exhibit A is not a true and literal copy of the said settlement?

12th. Whether the said settlement, though dated the 18th day of November, A. D. 1835, was not really made on or before the 16th day of November, A. D. 1835, or on or before any other and what day; and whether the paper marked exhibit B is not a true and literal copy of a certain letter addressed to your orator by the said Joseph

Archer, from the said city of Philadelphia, on the said 16th day of November, A. D. 1835?

13th. Whether the said Joseph Archer did not, on the 19th day of November, A. D. 1835, or on any other and what day, sign and deliver to your orator a certain paper writing relating to the said settlement of the said accounts between your orator and the said Joseph Archer, and whether the paper hereto annexed, marked exhibit C, is not a true and literal copy of the said paper writing?

14th. Whether the said Joseph Archer did not address to your orator a letter, dated Manchester, December 17th, 1835, or of any other and what date, upon the subject of the said settlement; and whether the paper hereto annexed, marked exhibit "D," is not a true and literal copy of the said letter?

15th. Whether your orator did not confirm the said settlement by a letter, addressed by your orator to the said Joseph Archer, dated Valparaiso, August 18th, 1837, or of any other and what date; and whether the paper hereto annexed, marked exhibit E, is not a true and literal copy of the said last mentioned letter?

16th. Whether, by the said settlement, your orator was not charged with the sum of $10,882 93, or any other and what sum; and whether the said sum was not stated, in the said settlement, to be your orator's half of an obligation incurred by the said Joseph Archer, in his individual name, but really on account of the said firm of Archer & Bispham, as a surety on certain custom-house bonds given to the said the United States of America, for duties due from a certain James L. Mifflin; and whether it was not assumed, in the said settlement, that the said bonds could be enforced by the said the United States of America against the said Joseph Archer, to the whole extent of his then apparent liability on the same, that is to say, to the extent of $21,765 87, or to any other and what extent was it assumed in the said settlement, that the said liability of the said Joseph Archer on the said custom-house bonds could be enforced by the said the United States of America?

17th. Whether the said Joseph Archer, in his lifetime, or any one representing him or his estate, since his death, has ever paid any part of the apparent liability of the said Joseph Archer to the said the United States of America, or any part thereof, or any sum or sums on account of the said custom-house bonds, except so much as has been paid on one in which the said William Foster was also jointly liable with the said Joseph Archer, and which became due on the 12th day of February, A. D. 1829, and was conditioned for the payment of $2,297 00, being the same bond which is described first in order in that part of exhibit A, entitled "statement of J. L. Mifflin's bonds for which Archer & Bispham are liable."

18th. Whether suit was not brought by the said the United States of America, against the said Joseph Archer, in the district court of the United States, for the eastern district of Pennsylvania, on the said last mentioned bond, as of February sessions, 1829, No. 75, or of any

other and what sessions, or of any other and what number, and whether it was not so proceeded on in said suit that judgment was recovered by the said the United States of America against the said Joseph Archer, on the 16th day of February, A. D. 1829, or on any other, and what day was judgment so recovered?

19th. Whether the said the United States of America did not afterwards sue out of the said district court a certain writ of scire facias on the said last mentioned judgment to February sessions, 1843, No. 16, or to any other and what sessions, or of any other and what number, against the said defendant, Eli K. Price, and your orator, as executors as aforesaid of the said last will and testament of the said Joseph Archer; and whether the marshal of the said eastern district of Pennsylvania did not return the said writ "made known," as to the said Eli K. Price, and "non est inventus," as to your orator?

20th. Whether the said defendant, Eli K. Price, did not appear to and defend the said last mentioned suit, and whether it was not so proceeded on therein, that afterwards, to wit, on the twenty-third day of May, A. D. 1843, or on any other and what day, a jury empannelled to try the said cause did or did not find a verdict for the said the United States of America, against the said Eli K. Price, executor as aforesaid, for the sum of three thousand eight hundred and twenty-nine $\frac{37}{100}$ dollars, for their debt, besides six cents costs, subject to any deduction which the court might thereafter make; and subject also to the opinion of the court on the facts given in evidence, or for any other and what sum, and upon any other and what terms, was a verdict so obtained?

21st. Whether credit was not afterwards given on the said last mentioned judgment for the sum of three thousand dollars, or for any other and what sum, paid on said bond, by any other and what person, to the collector of the port of Philadelphia, on the twenty-fifth day of September, A. D. 1843, or on any other and what day, and whether the said credit was not given by order of the district attorney of the United States, for the eastern district of Pennsylvania, filed of record on the 13th day of January, A. D. 1845, or on any other and what day was the said order of the said district attorney so filed of record?

22d. Whether the said judgment was not afterwards, on the seventh day of May, A. D. 1850, or on any other and what day, by order of the said district attorney of the United States, in and for the said district, marked satisfied?

23d. Whether the said the United States of America did not, during the year eighteen hundred and twenty-nine, or during any other and what year, and during the lifetime of the said Joseph Archer, bring suit at law in the district court of the United States, for the eastern district of Pennsylvania, against the said James L. Mifflin, and the said William Foster, and the said Joseph Archer, on each of the three of the said custom-house bonds, (each thereof being a bond wherein the said Joseph Archer and the said William Foster were jointly and severally bound to the said the United States of America, with, and as sureties of, the said James L. Mifflin,) and whether the said bonds, whereon

the said last mentioned suits were brought, were not the same as are described the second, fourth, and ninth in order, in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds for which Archer and Bispham are liable?"

24th. Whether it was not so proceeded on, in each of the said suits on the said last mentioned bonds, that afterwards the said the United States of America recovered judgment on the eighteenth day of May, A. D. 1829, or on any other and what day, on two of the said last mentioned bonds, and on the sixteenth day of November, A. D. 1829, or on any other and what day, on the remaining one other of the said last mentioned bonds, in the suits thereon against the said defendants therein, to wit, the said James L. Mifflin, the said William Foster, and the said Joseph Archer, for the respective amounts of the said last mentioned bond, together with interest to the day of judgment, or for any other and what amount was judgment recovered by the said the United States of America, in each of the said suits on each of the said last mentioned bonds?

25th. Whether the said the United States of America did not, during the said year A. D. 1829, or in any other and what year, and during the lifetime of the said Joseph Archer, bring suit at law in the said district court, against the said James L. Mifflin and the said Joseph Archer, on each of the remaining five of the said custom-house bonds, (each thereof being a bond wherein the said Joseph Archer was bound to the said "the United States of America," jointly and severally with and as surety of the said James L. Mifflin, without any other surety;) and whether the said bonds, whereon the said last mentioned suits were brought, were not the same bonds as are described the third, fifth, sixth, seventh, and eighth in order in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds for which Archer and Bispham are liable?"

26th. Whether it was not so proceeded on in each of the said last mentioned suits on each of the said last mentioned bonds, that the said the United States of America recovered judgment on one of the said last mentioned bonds in the said suits thereon, on the eighteenth day of May, A. D. 1829, or on any other and what day, and on the remaining four of the said last mentioned five bonds on the twenty-fifth day of August, A. D. 1829, or on any other and what day, against the said defendants therein, to wit, the said James L. Mifflin and the said Joseph Archer, for the respective amounts of the said last mentioned bonds, together with interest to the day of judgment, or for any other and what amount was judgment recovered by the said the United States of America, in each of the said last mentioned suits, on each of the said last mentioned bonds?

27th. Whether the said James L. Mifflin is not still living?

28th. Whether by reason of the death of the said Joseph Archer, on the said twenty-eighth day of September, A. D. 1841, or on any other and what day, leaving the said James L. Mifflin him (the said Joseph Archer) surviving, the estate and assets of the said Joseph Archer in

the hands of his representatives, did not become, and were not, discharged from any liability which the said Joseph Archer was under to the said the United States of America, during his lifetime, for or by reason of the judgments so as aforesaid recovered on the said last mentioned eight custom-house bonds, and in consequence thereof, for or by reason of the said last mentioned eight custom-house bonds; and whether the said defendant, Eli K. Price, as executor of the said last will and testament of the said Joseph Archer, has not at all times since the said death of the said Joseph Archer, and does not now claim to hold the estate of the said Joseph Archer, and the assets in his, the said defendant, Eli K. Price's, hands, as executor as aforesaid, discharged of and from all liability to the said the United States of America, for or by reason of the judgments so as aforesaid recovered in the said last mentioned eight custom-house bonds, in consequence and by reason of the said death of the said Joseph Archer, leaving the said James L. Mifflin him surviving?

29th. Whether the said the United States of America did not file their bill in equity in this honorable court as of October sessions, 1843, No. 3, or of any other and what sessions, or of any other and what number, against the said defendant, Eli K. Price, as executor of the said last will and testament of the said Joseph Archer, and also against your orator, wherein the said the United States of America claimed to recover from the estate of the said Joseph Archer the amount of three of the said last mentioned eight custom-house bonds, being three of the said bonds wherein the said Joseph Archer was jointly and severally bound with the said William Foster as surety, of and with the said James L. Mifflin, and which are described the second, fourth, and ninth in order in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds for which Archer and Bispham are liable?"

30th. Whether the said Eli K. Price was not duly served with process therein, and whether the said Eli K. Price did not appear to the said suit, and file his answer to the said bill, and whether your orator was or was not served with process therein?

31st. Whether the said last mentioned suit was not heard on the said bill, and on the said answer thereto of the said Eli K. Price, and whether this honorable court did not decree in favor of the said Eli K. Price, and dismiss the said bill?

32d. Whether the said the United States of America did not enter an appeal to the Supreme Court of the United States, from the said decree of this honorable court, and whether it was not so proceeded on said appeal, that afterwards, to wit, on the first Monday of the term of December, A. D. 1849, or on any other and what day, the said the Supreme Court of the United States affirmed the said last mentioned decree of this honorable court?

33d. Whether the United States of America did not file their certain other bill in equity in this honorable court, as of October sessions, 1843, No. 4, or of any other and what sessions, or of any other and what

number, against the said Eli K. Price, as executor of the said last will and testament of the said Joseph Archer, and also against your orator, wherein the said the United States of America claimed to recover from the estate of the said Joseph Archer the amount of the remaining five of the said last mentioned eight custom-house bonds, (being the same bonds wherein the said Joseph Archer was jointly and severally bound with, and as surety of, the said James L. Mifflin, without any other surety, and which are described the third, fifth, sixth, seventh, and eighth, in order in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds, for which Archer and Bispham are liable?"

34th. Whether the said defendant, Eli K. Price, was not duly served with process therein, and whether the said defendant, Eli K. Price, did not appear to the said last mentioned suit, and file his answer to the said last mentioned bill, and whether your orator was or was not served with process therein?

35th. Whether the said last mentioned suit was not heard on the said last mentioned bill, and on the said answer thereto of the said defendant, Eli K. Price, and whether the said honorable court did not decree in favor of the said defendant, Eli K. Price, and dismiss the said bill?

36th. Whether the said the United States of America did not enter an appeal to the Supreme Court of the United States from the said last mentioned decree of this honorable court, and whether it was not so proceeded on the said last mentioned appeal, that afterwards, to wit, on the first Monday of the term of December, A. D. 1849, or on any other and what day, the said the Supreme Court of the United States affirmed the said last mentioned decree of this honorable court?

37th. Whether the said settlement of the said accounts between the said Joseph Archer and your orator, so as aforesaid made by the said William Foster, was not made expressly, and by its express terms, in full liquidation and settlement between the said Joseph Archer and your orator, of all matters, claims, and demands, relating to or growing out of their (Archer and Bispham's) late firm, so far as they were "known, ascertained, or believed to exist" at the time of the said settlement; and whether it was not expressly declared, as a part of the terms thereof, as liabilities might thereafter be established or ascertained, or claims received not known to exist at the time of the said settlement growing out of transactions during the partnership (of Archer and Bispham) for partnership account, that it was understood and agreed that the same were not embraced in the said settlement of the said account?

38th. Whether any liabilities have been established or ascertained, growing out of transactions during the said partnership (of Archer and Bispham) for partnership account, and whether any payments have been made on account of the same other than of those known to exist at the time of the said settlement of the said accounts of the said Joseph

Archer and your orator, so as aforesaid made by the said William Foster?

39th. Whether any claims have been received by our orator, growing out of transactions during the said partnership of Archer and Bispham for partnership account as aforesaid?

40th. Whether the moiety of the said sum of $21,765 87, so as aforesaid assumed in the said statement as a positive liability of the said Joseph Archer in his and your orator's joint account, to wit, on account of the said herein before mentioned custom-house bonds, was not retained by him, the said Joseph Archer, out of your orator's share of the said partnership balance appearing by the said statement of the accounts of the said firm of Archer and Bispham, to meet your orator's share of the said supposed and assumed liability of him, the said Joseph Archer, in the said herein before mentioned custom-house bonds?

41st. Whether by reason of the death of the said Joseph Archer, and the herein before recited decisions of the herein before mentioned courts, the said defendant, as executor of the said last will and testament of the said Joseph Archer, and the estate of the said Joseph Archer, were not declared and finally decreed to be discharged of and from all liabilities on the said last mentioned eighth of the said custom-house bonds.

42d. Whether the said Joseph Archer in his lifetime, or any one representing him or his estate since his death, has paid any part of the said sum of $21,765 87, except so much as was paid on account of the judgment so as aforesaid obtained by the said the United States of America, on the said custom-house bond described first in order in that part of exhibit A, hereto annexed, entitled "statement of J. L. Mifflin's bonds for which Archer and Bispham are liable," and which said last mentioned judgment, by order of the said District Attorney of the United States, was marked "satisfied?"

43d. And whether your orator hath not, by himself or agents, made such applications and requests to the said defendant, Eli K. Price, as are herein before in that behalf mentioned, and whether the said defendant, Eli K. Price, has not refused to comply therewith, and why?

And that the said defendant, Eli K. Price, may answer the premises, and that an account may be taken under the direction of this honorable court of all and every payment made under legal obligation, either by the said Joseph Archer in his lifetime, or by the said defendant, Eli K. Price, and your orator, as executors of his last will and testament, or by the said defendant, Eli K. Price, (as sole executor as aforesaid, after the discharge as aforesaid of your orator,) since the death of the said Joseph Archer, on account of the said nine custom-house bonds, or any of them, on which the said Joseph Archer was so as aforesaid liable to the said United States of America as surety of the said James L. Mifflin, and that the amount due to your orator from the said defendant, as executor as aforesaid, may be ascertained, and that the said defendant may pay to your orator the balance of the said sum of $10,882 93, after deducting therefrom his proportion of the amount of any such lawful payment as aforesaid, for or on account of the said

908.

nine custom-house bonds, or any of them, and that the said defendant may also pay to your orator any interest due from him, the said defendant, Eli K. Price, as executor as aforesaid, to your orator on account of the said sum of $10,882 93, and on account of any such balance thereof as aforesaid, and that your orator may have such further and other relief in the premises as the nature of his case may require, and to your honors shall seem meet. May it please your honors to grant unto your orator the writ of subpœna of the United States of America, to be issued out of and under the seal of this honorable court, to be directed to the said defendant, Eli K. Price, esquire, executor as aforesaid, thereby commanding him at a certain day and under a certain pain therein to be limited, personally to be and appear before your honors in this honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further orders, directions, and decree therein as to your honors shall seem meet.

And your orator shall ever pray, &c.

CHAS. BISPHAM,
B. GERHARD,
Of counsel with complainant.

The defendant above named is required to answer all the foregoing interrogatories, from No. 1 to No. 43, both inclusive.

CHAS. BISPHAM,
B. GERHARD,
Of counsel with complainant.

Exhibit A.

Statement of Charles Bispham's interest in J. Archer's earnings in Canton.

1832. Jan. 31. C. Bispham's proportion of gain in Canton up to this date - - - - -	$9,263 17
1833. Jan. 31. Ditto, ditto, including interest as per statement sent him - - - - -	12,991 87
Interest on $22,255 04 fr. Feb. 1 to June 1, 1833, being the time of the dissolution of N. Dunn & Co's firm at 12 per ct. per ann. - - - -	890 20
1834. Jan. 31. C. Bispham's proportion of gain in Canton to this date, arising from unfinished business of N. Dunn & Co. - - - - -	1,569 84
Interest on $23,145 24 fr. June 1, 1833, to Feb. 1, 1834, at 12 per ct. per ann. - - - -	1,851 61
1835. Jan. 31. C. Bispham's proportion of gain in Canton to this date, arising from unfinished business of N. Dunn & Co. - - - - -	1,614 76
Interest on $26,566 69 from Feb. 1, 1834, to Jan. 31, 1835, at 12 per ct. per ann. - - -	3,188 00

Commissions earned by J. Archer after the closing the firm of N. Dunn & Co. and previous to the partnership of Wetmore & Co., due Feb. 1, 1835, $13,677 39. C. Bispham's half is - - - -			$6,838 69
Interest on $38,208 14 fr. Feb. 1 to June 1, 1835, at 12 per ct. per ann. - - - - -			1,528 32
Shipment of raw silk to England— Nett sales, £ sterling, 21,733 0s. 9d. =		$96,680 16	
Cost in Canton - -	$61,249 35		
Insurance and commission for making it, 2 pr. ct. -	1,224 98		
Amounts carried forward,	62,474 33	96,680 16	39,736 46
Amounts brought forward,	62,474 33	96,680 16	39,736 46
Int. on $34,034 43 fr. Sept. 18 to Oct. 31, 1833, at 12 pr. ct. pr. ann. - -	487 82		
Int. on $61,737 17, fr. Oct. 31, 1833, to Jan. 31, 1834, at 12 pr. ct. pr. ann. -	1,858 12		
Int. on $63,589 29 fr. Feb. 1, 1834, to Jan. 31, 1835, at 12 pr. ct. pr. ann. -	7,630 71		
Int. on $71,220 fr. Feb. 1, 1835, to June 1, 1835, at 12 pr. ct. pr. ann., at which date it is supposed the remittance will reach Canton	2,848 80	75,293 78	
		$21,386 38	
C. Bispham's half of gain on raw silk, due June 1, 1835 - - - - -			10,693 19
Estimated gain on Wetmore & Co's business from Feb. 1 to Aug. 1, 1834, being the period of the expiration of the partnership between J. Archer and C. Bispham—			
Brig R. Alsop,	supposed $3,600		
Barque Pearl,	" 2,500		
Ship Oliver and Eliza,	" 5,000		
" Splendid,	" 10,000		
" Colisseum,	" 10,000		
	31,100		
J. Archer's proportion,	30 pr. ct.	9,330 00	
Amounts carried forward,		$9,330 00	$50,429 65

Amounts brought forward - -	$9,330 09	$50,429 65
C. Bispham's ½ of gain on Wetmore & Co's business -		4,665 00
Interest on $4,665 00 fr. Aug. 1, 1834, to June 1, 1835, at 12 pr. ct. pr. ann. - - - -		466 50
		55,561 15
1834, June 11. Paid Capt. Engle, for ac't of C. Bispham - - - -	478 75	
Interest from June 11, 1834, to June 1, 1835, at 12 pr. ct. pr. ann. - - -	55 85	
1835, Jan. 1. Paid Wm. S. Wetmore bal. of ac't due Aslop, Wetmore & Co., by Archer & Bispham, $2,156 63; C. Bispham's ½ is - - - -	1,078 31	
Interest on $1,078 31 fr. Jan. 1 to June 1, 1835 - - - - -	53 91	
1835, June 1. Paid N. Dunn balance of account due him on shipment pr. Franklin, which sum had been received by Archer & Bispham, $1,297 30; C. Bispham's ½ - - - -	648 65	
Paid Lawyer's fees on ac't Mifflin's bonds, $200 00; C. Bispham's ½ - -	100 00	
Paid ditto, suit with Higginsons, $250 00; C. Bispham's ½ - - - -	125 00	
		2,540 47
		53,020 68
1835, Nov. 9. Paid Samuel Archer balance due him by Archer & Bispham, with interest to date - - - -	1,575 75	
C. Bispham's ½ - - - -	787 87	
Amounts carried forward - -	787 87	53,020 68
Amounts brought forward - -	787 87	53,020 68
Paid ditto, balance due on Jno. H. Polhemus' note, endorsed by C. Bispham, with interest to date - - - -	1,150 51	
C. Bispham's liability for J. L. Mifflin's bonds, as pr. statement herewith -	10,882 93	
		12,821 31
		$40,199 37

Statement of Chas. Bispham's earnings in South America, as per memorandum received of Richard Alsop.

1st concern from Aug. 1, 1829, [to] Dec. 31, 1830	$84,387 3¾	
2d concern from Jan. 1, 1831, to July 31, 1832	56,499 4¼	
3d concern from Aug. 1, 1832, to July 31, 1834	193,717 4½	
	$334,604 4½	
C. Bispham's proportion ⅛ of 84,387 46	14,064 58	
⅛ of 56,499 56	7,062 45	
⅛ of 193,717 56	24,214 69	
	½ 45,341 72	
J. Archer's ½	22,670 86	
Interest on $22,670 86, say 1 year, at 12 per cent.	2,720 50	
		25,391 36
		$14,808 01

Statement of J. L. Mifflin's bonds, for which Archer and Bispham are liable.

Due 1829.		Paid.	Yet due.	Int. to Nov. 1, 1835, at 6 pr. ct. pr. ann.	
Feb. 12,	2,297 00	270 00	2,027 00*	"	$817 21
Apl. 28,	4,188 62	112 84	4,075 78*	"	1,831 59
May 7,	1,480 00	-	1,480 00	"	575 72
" 1,	1,955 00	1,463 96	491 04*	"	191 49
" 26,	600 00	242 00	358 00	"	138 13
" 31,	5,194 80	-	5,194 80	"	2,000 00
June 30,	528 10	-	528 10	"	200 67
July 8,	3,767 50	-	3,767 50	"	1,427 22
Oct. 12,	2,297 00	274 00	2,023 00*	"	734 35
		$19,945 22			$7,916 38

*Wm. Foster is jointly liable with Archer & Bispham upon these bonds.

C. Bispham's proportion of Bonds ¼ of	$12,191 46	$3,047 86
⅛	15,670 14	7,835 07
	$27,861 60	$10,882 93

910.

J. Archer's proportion of Bonds, ½ same - - - -		$10,882 94
Wm. Foster's proportion of Bonds, ½ of - - -	22,191 46 -	6,095 73
		$27,861 60

Whereas, I, William Foster, by virtue of authority received from J. Archer and Charles Bispham, dated Canton, April 29th, 1834, and Valparaiso, Nov. 15, 1834, and 13th May, 1835, lately trading under the firm of Archer & Bispham, having examined the accounts of said firm referred to me by the parties, do award and determine that J. Archer is indebted and should pay unto Charles Bispham, or his agent, the sum of fourteen thousand eight hundred and eight $\frac{0}{100}$ dollars (14,808 01) in liquidation and full settlement, between them, of all matters, claims, and demands, relating to or growing out of the transactions of their late firm, so far as they are now known, ascertained, or believed to exist; but as liabilities may hereafter be established or ascertained, or claims received, not now known to exist, growing out of transactions during the partnership, for partnership account, it is understood that the same are not embraced in the foregoing settlement and determination by me as the agent and umpire of the parties, and especially any matter of such character contingent on the result of pending suits is excepted from this adjustment of the affairs of said firm.

Witness my hand, this 18th day of November, 1835.

WILLIAM FOSTER.

Witness: J. T. Ryerson.

Exhibit B.

Philadelphia, *November* 16, 1835.

Dear Charles: I am in receipt of your favor of the 13th May, and note the contents. I was most sincerely desirous of meeting you in this country, but as I shall embark for England on the 20th inst., and from thence for China, there seems but little chance of our meeting for some years. I have therefore resolved, in conformity with your letter of the 13th May, to make a settlement of Archer & Bispham's affairs with William Foster, as per statement, which he will forward you, and which I think is settled upon liberal principles upon my part.

During our absence, my father endeavored to effect a compromise with the Government for Mifflin's bonds, and since my return I have also made an effort to do the same, but without effect, as the officers entrusted with such matters can make no abatement in the whole amount due, with interest, unless the applicant produce all their books and papers, and affirm their inability to pay the full amount. With these conditions I could not comply; and as there seems likely to be no benefit to us by longer delay, I have concluded to pay the amount. My father has funds enough of mine in his hands to pay the amount,

which will be appropriated to that purpose so soon as he can realize them. You will observe by the statement that your proportion of the bonds has been deducted from the sum due you. I therefore absolve you from all claim for these bonds, your proportion being paid to me in settlement.

I have paid my father a balance of account due him by Archer & Bispham, and also paid him the balance of J. H. Polhemus's note with your endorsement, held by him. See statement.

I have given you credit for one-half the gain on a shipment of raw silk which I made to London, which shipment was made on the 30th July, 1834, only one day before the expiration of our partnership. Had there been a loss on it, I should have borne it myself, as I did not consider it in our legitimate business; however, I am satisfied to settle the matter between us as it now stands confirmed by Wm. Foster.

There have been commissions earned to the amount of $\$19{,}344\frac{88}{100}$, of which I have given you no part; they arise on the consignments of the ships Liberty, Duncan, and Phillip. 1st. The reasons why I have taken the whole of these commissions, are, that in the two first named vessels my father made me responsible personally for advances made on shipments of merchandise, and also obligated me to fill a very considerable amount of tonnage in the latter vessel. He made me liable to John A. Brown & Co. for any loss that might arise on one-half the cargo. He brought me under these responsibilities for the purpose of procuring the consignments, otherwise they would either not have been made, or would have gone to some other house. I therefore think as you could not have been made responsible for any loss in case there had been any, I am in justice entitled to the gain. If there is any thing in this settlement which does not meet your approbation, I wish you to state it candidly to Wm. Foster, with your reasons, and let him as your agent appoint an arbitrator, and my father as mine will name another, and let them say what is right and just under all circumstances, embracing the gain allowed you on the shipment of raw silk in settlement, and open the account anew for adjustment.

I shall write to Wetmore by the Horatio, to sail for Canton in a few days, and instruct him to remit you the balance due you as per statement, in a bill on London, which I trust will meet your approbation.

In looking over the account you will observe I have allowed you compound interest, whereas I have only charged you one year's interest. If the settlement meets your approbation, confirm it under your own hand and send it to me in Canton.

There is a claim of about $18,500 set up against me by a house in New York, and a suit commenced for an alleged disobedience of orders in making an investment per ship Timon; should they be able to establish the claim you are liable for one-half.

Very truly, your friend,

(Signed) J. ARCHER.

P. S. I shall hand Polhemus's note to Wm. Foster.

Addressed, "Charles Bispham, esq., Valparaiso."

Exhibit C.

William Foster having agreed to, and ratified the final settlement of all accounts between J. Archer and Charles Bispham, in relation to the late partnership of Archer & Bispham, this is to certify, that in case Charles Bispham in his own name objects to said settlement, William Foster is to be held entirely free from all blame and responsibility whatever, and I hereby bind myself, my heirs, executors, and assigns, to abrogate said settlement, and open it for a new and final adjustment.

J. ARCHER.

PHILADELPHIA, *November* 19*th*, 1835.

Exhibit D.

MANCHESTER, *December* 17, 1835.

DEAR CHARLES: I wrote to our friend Wm. Foster yesterday about our settlement, and have stated to him that if you were not satisfied with it, I was perfectly willing to leave it to an arbitration; he will show you the letter if you desire it. I want the business closed, for should you or I make a finish of our career in this world, it never could be settled with any degree of certainty.

Cryder's agent in this country wrote to him some time since, that your house on the coast had received W. & Co's proposition of a joint exchange operation between the coast, China, and this country; but he observed that you seemed ticklish about it. Now, I think there is no transaction that is more safe than the one proposed to you. The last accounts from Canton $\frac{d.\ d.}{60\text{-}61}$ could have been bought for a dollar, when you could have sold on the coast $\frac{d.\ d.}{46\text{-}48}$ for the same money. We are losing a splendid thing by this delay. There is no concern can carry on this business as well as we can, particularly since Cryder has formed his new concern. I wish you would talk with Alsop about this matter, and put it in a train at once; he was much in favor of it when I was there.

I shall embark from this country some time in the spring; I shall wait for some fine ship. I wish I could have seen you before I left the United States.

Believe me, ever yours, &c.,

J. ARCHER.

Exhibit E.

VALPARAISO, *August* 18, 1837.

JOSEPH ARCHER, esq., *Canton.*

DEAR SIR: The settlement of the affairs of Archer & Bispham, as made by Mr. William Foster, under date of the 18th November, 1835, showing a balance in my favor of fourteen thousand eight hundred and eight $\frac{01}{100}$ dollars, is perfectly satisfactory to me, and I do hereby con-

firm the same; and I also acknowledge to have received said balance in a remittance made to Messrs. Alsop & Co. on my account, in a bill drawn by Messrs. Wetmore & Co., of Canton, dated June 5th, 1836, on Messrs. Morrison, Crider & Co., London, for thirty-five hundred and sixteen pounds eighteen shillings sterling.

As we are both in possession of a copy of the settlement alluded to, I refer to the same for the endorsement made at foot of that account, and signed by William Foster, respecting any unsettled claims which may be made on said firm of Archer & Bispham, which I also confirm and hold myself responsible for. And intending this letter as entirely exonerating you from any further claims from myself, heirs, or executors, I am, yours, truly,

(Signed) CHAS. BISPHAM.

Addressed, "Joseph Archer, esq., Mess. Wetmore & Co., Canton."
JOHN GILPIN.

Answer of respondent.

Afterwards, to wit, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and fifty, the answer of Eli K. Price, the respondent, is presented by his solicitor, John Miles, esquire; which answer, being read and filed, is in the words and of the tenor following, to wit:

In the circuit court of the United States, for the eastern district of Pennsylvania, sitting in equity.

The answer of Eli K. Price, defendant, to the bill of complaint of Charles Bispham, plaintiff:

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said plaintiff's said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, for answer unto the

First interrogatory in plaintiff's bill, saith: That it is true in respect to the matters and things charged in said bill in said interrogatory inquired of, and therefore answers in the affirmative.

And this defendant further answering, to the

Second interrogatory in plaintiff's bill, saith: That it is true in respect to the matters and things charged in said bill in said interrogatory inquired of, and therefore answers in the affirmative.

And this defendant further answering, to the

Third interrogatory in plaintiff's bill, saith: That Joseph Archer died on the 28th day of September, 1841, without altering or revoking his will.

And this defendant further answering, to the

Fourth interrogatory in plaintiff's bill, saith: That the said Charles

Taylor did, in writing, on the first day of October, 1841, renounce the executorship of said will of Joseph Archer, and filed the same as stated in the interrogatory.

And this defendant further answering, to the

Fifth interrogatory in plaintiff's bill, saith: That the said will was duly proved; the requisite official oath or affirmation was made by, and letters testamentary were granted to, the plaintiff and this defendant, as charged in the plaintiff's bill and herein inquired of.

And this defendant further answering, to the

Sixth interrogatory in plaintiff's bill, saith: That the plaintiff and defendant did assume the duties of executors of said will, as charged in plaintiff's bill, and herein inquired of.

And this defendant answering, to the

Seventh interrogatory in plaintiff's bill, saith: That as to the matters inquired of, he admits the discharge of the plaintiff as an executor as aforesaid, on the filing of an account, on his own petition, on the twenty-fifth day of February, 1843, and the surrender of the estate to this defendant, as charged in plaintiff's bill.

And this defendant further answering, to the

Eighth interrogatory in plaintiff's bill, saith: That as to the matter inquired of, he did become, and is, the sole legal representative of the said Joseph Archer, and executor of his will, and as such, he has in his hands assets of the estate of the said decedent sufficient to pay the claim of the plaintiff, as set forth in his bill, if he is entitled in law and equity to the same, as charged in said bill, but which this defendant gainsays and denies.

And this defendant further answering, to the

Ninth interrogatory in plaintiff's bill, saith: That the plaintiff and the said Joseph Archer, prior to the eighteenth day of November, A. D. 1835, were co-partners in business as merchants, under the firm of Archer and Bispham, and as such they had various and extensive accounts together. This defendant hath no knowledge of the precise time of their commencement of business as co-partners, nor any information of the date thereof from other sources, except an agreement in writing executed by the said Archer and Bispham, dated at Philadelphia, the sixteenth day of June, A. D. 1828, in the possession of this defendant, a copy of which, (marked "No. 1,") is hereto annexed, and which defendant prays may be taken as part of this answer; by which it appears, that prior to the said last mentioned date the co-partnership existed. And this defendant believes, from the statement or exhibits attached to plaintiff's bill, and the duplicates whereof are in his possession, that the subject matter on which the plaintiff's claim stated in his bill is founded, formed a part of the copartnership business transactions of the said firm of Archer & Bispham, to wit, the custom-house bonds stated in plaintiff's bill, and the exhibits thereto attached.

And this defendant further answering, to the

Tenth interrogatory in plaintiff's bill, saith: That he does not know, but believes that the said copartnership of Archer & Bispham was dis-

solved before the eighteenth day of November, A. D. 1835; that an agreement in writing was executed by the said plaintiff and Joseph Archer at the places, and of the dates stated in the said interrogatory, constituting "William Foster, esq., our (their) joint agent in the settlement of all accounts between Charles Bispham and Joseph Archer, their heirs, executors, or assigns, and the said William Foster's decision shall be final and binding on all parties concerned;" the original of which agreement is in this defendant's possession; a true copy whereof (marked No. 2) is hereto annexed, and which this defendant prays may be taken as part of this answer.

And this defendant further answering, to the

Eleventh interrogatory in plaintiff's bill, saith: That the said William Foster did make a settlement of the accounts, and did make an award, dated the eighteenth day of November, 1835, the said Archer being at Philadelphia, and the said Bispham at Valparaiso, as the defendant believes; that the paper marked A, attached to plaintiff's bill, contains true copies of the said settlement. The copy in plaintiff's exhibit A, of the award of William Foster, does not correspond with the original in defendant's possession; a copy of which (marked No. 3) is hereto annexed, and which this defendant prays may be taken as a part of this answer.

And this defendant further answering, to the

Twelfth interrogatory in plaintiff's bill, saith: That the settlement or statement of accounts referred to, was prepared a short time previous to the sixteenth day of November, 1835, it having been in the hands of the referee or agent, William Foster, for that purpose, but what precise day defendant does not know; and this defendant believes William Foster's award was signed by him on the day it bears date, to wit, the eighteenth day of November, 1835. And the defendant does not know, but, from a copy in his possession in the handwriting of Archer, verily believes that a copy of a letter, dated the sixteenth day of November, 1835, from Archer to Bispham, (attached to plaintiff's bill, marked B,) is truly made from an original.

And this defendant further answering, to the

Thirteenth interrogatory in plaintiff's bill, saith: That he hath no knowledge or information, save by complainant's bill, and cannot set forth his belief as to the matter inquired of.

And this defendant further answering, to the

Fourteenth interrogatory in plaintiff's bill, saith: That he hath no knowledge or information, save by complainant's bill, and cannot set forth his belief as to the matter inquired of.

And this defendant further answering, to the

Fifteenth interrogatory in plaintiff's bill, saith: That the copy of a latter from the plaintiff to Joseph Archer, dated Valparaiso, the eighteenth day of August, 1837, attached to plaintiff's bill, (and marked E,) is a true and literal copy of the original, which is in defendant's possession.

And this defendant further answering, to the

Sixteenth interrogatory in plaintiff's bill, saith: By the said settlement the plaintiff was charged with the sum of $10,882 93, and it is so stated on its face, and it was on account of obligations incurred by the said Archer in his individual name, but really on account of the firm of Archer & Bispham, within the scope of their partnership agreements, as a surety on custom-house bonds, given to the United States of America for duties due from a certain James L. Mifflin. The said sum of $10,882 93, was not stated in said settlement to be the one-half of obligations incurred by the said Joseph Archer on account of the said firm, but, as appears on the face thereof, was one-half of the principal and interest to that date, amounting to $7,835 07, of five custom-house bonds, in which Mifflin was the principal and Archer the surety, and in which both were jointly and severally bound; and also one-fourth of the principal and interest to that date, amounting to $3,047 86, of four custom-house bonds, in which the said Mifflin was principal, and Archer and William Foster were the sureties, and in which the three last named were jointly and severally bound; copies of which bonds (marked No. 4) are annexed hereto, and which this defendant prays may be taken as part of this answer.

This defendant has no knowledge, information, or belief, that it was assumed in the said settlement that the said bonds could be enforced by the said United States of America against the said Joseph Archer, to the whole extent of the apparent liability on the same, or to the extent of $21,765 87, or to what extent. And the defendant avers—the facts which appear in the exhibits attached to the plaintiff's bill and this answer, which are or may be admitted or proved, to wit: 1st, That by the nature of the co-partnership between said Archer and Bispham, the latter was bound to pay, in cash or account, one-half to Archer, of such sums as he was or might be responsible for, or obliged to pay, on account of said partnership. 2d, That the whole of the said custom-house bonds amounting, on the date of the settlement, November 18, 1835, principal and interest, to $27,861 60, in which Archer was an obligor and a surety, was embraced within such co-partnership. 3d, That in the said settlement, as between the said Archer and Bispham, the sum of $6,095 73, being part of the said custom-house bonds, was stricken off, its proportion being chargeable to Bispham. 4th, That, during the lifetime of the said Archer the claim of the United States was resisted by him; and prior to the award and settlement, as appears by a copy of his letter to Bispham, among the exhibits attached to plaintiff's bill, (marked B,) dated November sixteenth, 1835, wherein he says: "During our absence, my father endeavored to effect a compromise with the Government for Mifflin's bonds, and since my return I have also made an effort to do the same, but without effect." 5th, That at the time of the said award and settlement of November eighteenth, 1835, there was an outstanding claim and suit against the said Archer to the amount of $18,500 00, on account of the firm of Archer and Bispham, which, if established, one-half thereof the said Bispham would have been liable to pay to the said Joseph Archer. And 6th, All

the other facts not herein specifically enumerated, which appear upon the exhibits of the documents, admitted or proven.

And this defendant further answering, to the

Seventeenth interrogatory in the plaintiff's bill, saith: That he does not know, but he believes, that nothing was paid by the said Joseph Archer in his lifetime, or by any one for him during said time, on account of the said custom-house bonds, on the apparent liability thereon of the said Joseph Archer, other than the amount stated in the account of said bonds set forth in exhibit A, attached to plaintiff's bill, nor has this defendant made any such payment to the United States, except the particular bond referred to in this interrogatory, which has been paid, with the debt, interest, and costs of the judgment thereon, obtained against the said Joseph Archer, in full, by this defendant.

And this defendant further answering, to the

Eighteenth interrogatory in the plaintiff's bill, saith: That as to the matters inquired of in this interrogatory his information, knowledge, and belief appear by reference to the records of the said district court in that behalf, copies of the docket entries of which (marked No. 5) are hereto attached, and which this defendant prays may be taken as part of this answer.

And this defendant further answering, to the

Nineteenth interrogatory in the plaintiff's bill, saith: That as to the matters inquired of in this interrogatory, his information, knowledge, and belief appear by reference to the records of the said district court in that behalf, copies of the docket entries of which (marked No. 5) are hereto attached, and which this defendant prays may be taken as part of this answer.

And this defendant further answering, to the

Twentieth interrogatory in the plaintiff's bill, saith: That as to the matters inquired of in this interrogatory his information, knowledge, and belief appear by reference to the records of the said district court in that behalf, copies of the docket entries of which (marked No. 5) are hereto attached, and which this defendant prays may be taken as part of this answer.

And this defendant further answering, to the

Twenty-first interrogatory in the plaintiff's bill, saith: That as to the matter inquired of in this interrogatory, his information, knowledge, and belief appear by reference to the records of the said district court in that behalf, copies of the docket entries of which (marked No. 5) are hereto attached, and which this defendant prays may be taken as part of this answer.

And this defendant further answering, to the

Twenty-second interrogatory in the plaintiff's bill, saith: That as to the matters inquired of in this interrogatory, his information, knowledge, and belief appear by reference to the records of the said district court in that behalf, copies of the docket entries of which (marked No. 5) are hereto attached, and which this defendant prays may be taken as part of this answer.

And this defendant avers that the whole amount of the debt, interest, and costs on this particular bond, and the judgment thereon paid by this defendant to the United States, was $3,913 90, to wit, September twenty-fifth, 1843, $3,000 00, and May third, 1850, $913 90; besides counsel fees and expenses incident to the defence of the claims of the United States, $1,524 80, at various times; all of which this defendant is willing to maintain and prove, as this court shall direct.

And this defendant further answering, to the

Twenty-third interrogatory in the plaintiff's bill, saith: That the United States of America did bring suits on the three custom-house bonds, as specified in the interrogatory, in the said district court of the United States; the terms, numbers, and dates of which appear in the docket entries of the said court in said suits, copies of which (marked No. 5) are hereto attached, and which this defendant prays may be taken as part of this answer.

And this defendant further answering, to the

Twenty-fourth interrogatory in the plaintiff's bill, saith: That the United States of America did proceed to recover judgments on said last mentioned suits on the dates, in such form, and generally without specification of amount, as appears by the copies of the docket entries hereto attached, (marked No. 5.)

And this defendant further answering, to the

Twenty-fifth interrogatory in plaintiff's bill, saith: That the United States did bring suits on the five custom-house bonds, as specified in this interrogatory, in the said district court of the United States, the terms, numbers, and dates of which appear in the copies of the docket entries hereto attached, (marked No. 5.)

And this defendant further answering, to the

Twenty-sixth interrogatory in plaintiff's bill, saith: That the United States of America did proceed to recover judgments on said last mentioned suits, on the dates, in such form, and generally without specification of amounts, as appears by the copies of the docket entries hereto attached, (marked No. 5.)

And this defendant further answering, to the

Twenty-seventh interrogatory in plaintiff's bill, saith: That he is informed and believes the said James L. Mifflin is still living.

And this defendant further answering, to the

Twenty-eighth interrogatory in plaintiff's bill, saith: That this defendant always did, and still does, hold and claim, that by reason of the death of the said Joseph Archer, his estate and assets were discharged, as stated in this interrogatory; that this defendant, as to the three bonds to which William Foster was a party, maintained, additionally, other points of defence; that the grounds upon which said estate and assets were finally held to be so discharged, as to all the bonds in question, appear by the opinion of the Supreme Court of the United States, a copy of which (marked "No. 6") is hereto annexed, and which this defendant prays may be taken as a part of this answer.

And this defendant further answering, to the

Twenty-ninth interrogatory in plaintiff's bill, saith: That the matters and things stated in this interrogatory are admitted to be true.

And this defendant further answering, to the

Thirtieth interrogatory in plaintiff's bill, saith: That this defendant was served with process, and the plaintiff was not; that this defendant appeared to said suit and filed his answer, as stated in plaintiff's bill.

And this defendant further answering, to the

Thirty-first interrogatory in plaintiff's bill, saith: That the matters and things stated in this interrogatory are admitted to be true.

And this defendant further answering, to the

Thirty-second interrogatory in plaintiff's bill, saith: That the matters and things stated in this interrogatory are admitted to be true; the date of the affirmance of the decree appears by exhibit No. 6, hereto annexed.

And this defendant further answering, to the

Thirty-third interrogatory in plaintiff's bill, saith: That the matters and things in this interrogatory stated are admitted to be true.

And this defendant further answering, to the

Thirty-fourth interrogatory in plaintiff's bill, saith: That this defendant was served with process, and the plaintiff was not; that this defendant appeared to said suit and filed his answer as stated in plaintiff's bill.

And this defendant further answering, to the

Thirty-fifth interrogatory in plaintiff's bill, saith: That the matters and things stated in this interrogatory are admitted to be true.

And this defendant further answering, to the

Thirty-sixth interrogatory in plaintiffs bill, saith: That the matters and things stated in this interrogatory are admitted to be true; the date of the affirmance of the decree appears in exhibit No. 6, hereto attached.

And this defendant further answering, to the

Thirty-seventh interrogatory in plaintiff's bill, saith: That he has no other knowledge of the matters inquired of than is contained in the written documents to which the plaintiff and the said Joseph Archer, deceased, were parties or privies; and this defendant in that behalf submits all of which documents as are proven or admitted, copies of which are attached to the plaintiff's bill and this answer, and especially the award of the said William Foster, dated November eighteenth, 1835, a copy of which is attached to this answer, (marked "No. 3,") and the statement attached to the plaintiff's bill, in exhibit A, to the judgment of this honorable court.

And this defendant further answering, to the

Thirty-eighth interrogatory in plaintiff's bill, saith: That he has no knowledge or information of the matters or things inquired of in this interrogatory, other than what appears upon the face of the documents admitted or proved, attached to the plaintiff's bill and this answer.

And this defendant further answering, to the

Thirty-ninth interrogatory in plaintiff's bill, saith: That he hath no

knowledge or information of the matters inquired of, save by the plaintiff's bill in that respect.

And this defendant further answering, to the

Fortieth interrogatory in plaintiff's bill, saith: That protesting against such parts of this interrogatory, which is argumentative as to the construction of written documents, and assumes facts dependent thereon, which this defendant gainsays and denies, this defendant submits to this honorable court the documents referred to in his foregoing answer to the interrogatory numbered 36 in the plaintiff's bill, and the facts and circumstances set forth in his foregoing answer to the interrogatory numbered 16, in the plaintiff's bill, all of which he reiterates hereby, and prays that the same may be incorporated and taken as a full answer to this interrogatory. And this defendant hath no knowledge, information, or belief, other than that derived from what is in this answer to this interrogatory stated, and he submits the said documentary testimony to the judgment of this honorable court.

And this defendant further answering, to the

Forty-first interrogatory in the plaintiff's bill, saith: That as to the matters and things inquired of, he submits his answer to the interrogatory numbered 28 in the said bill, which he prays may be incorporated and taken as a full answer to this interrogatory, having no other knowledge, information, or belief.

And this defendant further answering, to the

Forty-second interrogatory in the plaintiff's bill, saith: That he has no knowledge of any such payments alluded to in said interrogatory, with the exception therein stated as to the amount of which, he prays his foregoing answer to the 22d interrogatory in the plaintiff's bill may be taken and incorporated as part of the answer to this interrogatory.

And this defendant further answering, to the

Forty-third interrogatory in the plaintiff's bill, saith: That the matters and things stated in this interrogatory are true.

And this defendant further answering saith: That the proceedings upon all the said custom-house bonds, to which said Joseph Archer was a party, as set forth in the plaintiff's bill, against the said Joseph Archer in his lifetime, or against this defendant, as executor herein before said, by the United States of America, whether at law or in equity, or on appeal in the district court of the United States, for the eastern district of Pennsylvania, in the circuit court of the United States, for the same district, and in the Supreme Court of the United States, appear by the records thereof, copies whereof, as fully as are material and necessary, are attached to this answer, marked respectively "Nos. 4, 5, and 6," all of which this defendant prays may be taken as a part of this answer, and as a part of the respective answers foregoing of this defendant to the respective interrogatories in the plaintiff's bill, wherein as to said proceedings this defendant is interrogated.

And this defendant further answering saith: That as to all the said proceedings on the part of the United States of America against the said Joseph Archer in his lifetime, and since, against this defendant as executor aforesaid, this defendant has paid and incurred divers neces-

sary costs, expenses, and charges out of, and for which the estate and assets of the defendant's testator's estate was or is liable, amounting in the whole to a large sum of money, all of which this defendant avers, and is ready and willing to maintain and prove; and of which he prays that an account may be taken, if this honorable court shall adjudge that the plaintiff hath any cause of action, or entitled to relief against this defendant, by reason of any matter or thing in the said plaintiff's bill contained, which cause of action or relief this defendant doth gainsay and deny.

And this defendant further answering saith: That by a certain letter or instrument of writing, executed by the plaintiff at Valparaiso, on the eighteenth day of August, A. D. 1837, addressed to, and which he caused to be delivered to, and which was received by, the said Joseph Archer in his lifetime, and which is now in this defendant's possession, to which he craves leave to refer when produced, he, the said plaintiff, among other things which are material, did, by way of release, in consideration of said award and mutual settlement, and the payment of the amount of said award to him, the said plaintiff, by him, the said Archer, to wit, of $14,808.01, if ever he had any claim or cause of action in respect to the matter or things alleged in the said plaintiff's bill, which this defendant in no sort admits, entirely exonerate the said Joseph Archer from any further claim in respect of the same from him, the said plaintiff, his heirs or executors; all of which this defendant avers, and is ready and willing to maintain and prove; and for which purpose a copy of said letter, or instrument of writing, is attached to plaintiff's bill, (marked exhibit E,) which this defendant prays may be taken as a part of this answer. And this defendant prays to have the same benefit of the said exoneration by way of release, as if he had specially pleaded the same.

And this defendant further answering saith: That the said Joseph Archer in his lifetime, and the said plaintiff, by their agreement to refer their partnership accounts to William Foster for adjustment and settlement, the award and the settlement of the said William Foster, and the confirmation of the same by the said Joseph Archer and the plaintiff, in the documentary testimony admitted or proved, or to be proven, contained in the exhibits attached to plaintiff's bill, (marked A, B, E,) and of those to this answer, (marked Nos. 1, 2, 3,) were a full settlement of all claims or demands by and against the said Joseph Archer, or the said plaintiff, or their legal representatives, for or by reason of any matter or thing in the plaintiff's bill contained, or in respect, or by reason of their partnership accounts, each party acting with full knowledge of the subject matter; being an express and final settlement, without further claim, challenge, or demand, to be had or made by either party against the other, or their respective representatives, in respect of any matter or item of their partnership accounts, saving and excepting only the express assumption and agreement of the said plaintiff to pay to the said Joseph Archer a moiety of all claims against the said firm then unknown, and which might be substantiated against them; the settlement of the business transactions of the said firm being

a final discharge by the said plaintiff to the said Joseph Archer, but a discharge by the said Joseph Archer to the said plaintiff, subject to the responsibility of the latter to the said Joseph Archer in certain contingencies, all of which this defendant avers, and is ready to prove and maintain; and in respect thereof submits the said exhibits, which he prays may be taken as a part of this answer.

And this defendant further answering saith: That to all the discovery and relief in and by the said bill sought from or prayed against this defendant, he doth submit to this honorable court in bar thereof, that by the acts of the general assembly of the Commonwealth of Pennsylvania, for the limitation of actions, which this defendant prays may be taken as part of this answer, it was enacted among other things, that all actions of account or of debt, grounded upon any lending or contract without specialty, shall be commenced within six years next after the cause of such actions or suit, and not after. And this defendant saith, that if the said plaintiff ever had any cause of action or suit against this defendant, or against the said Joseph Archer, the defendant's testator, for or concerning any of the matters in the plaintiff's bill mentioned, which this defendant doth in no sort admit, such cause of action did accrue or arise about six years before serving or suing out process against this defendant, to appear to, and answer the same bill; and the said plaintiff was not, at any time within upwards of six years before the filing of his bill, or within upwards of six years before the serving or suing out process against this defendant to appear to answer the said bill, nor hath the plaintiff prior to the death of the said Joseph Archer, or at any time since the same, been under any of the disabilities mentioned and described in the said acts of assembly; and this defendant further saith, that this defendant did not, at any time within six years before exhibiting the said bill, or serving or suing out process against this defendant, to appear to and answer the same, promise or agree to come to any account for, or to pay, or any ways satisfy the said complainant, any sum or sums of money for or by reason of any matters, transactions, or things in the plaintiff's bill charged or alleged, nor to this defendant's knowledge or belief did the said Joseph Archer, deceased, this defendant's testator, at any time prior to his decease do the like. All which this defendant doth aver to be true, and is ready to maintain and prove as this honorable court shall direct. And this defendant insists upon the said statutes, and claims the same benefit as if he had pleaded the same.

And this defendant further answering, saith: That to all the discovery and relief in and by the said bill sought from or prayed against this defendant, he doth submit to this honorable court in bar thereof, that, if the said plaintiff ever had any cause of action or suit against this defendant, or against the said Joseph Archer, the defendant's testator, for or concerning any of the matters in the plaintiff's bill mentioned, which this defendant doth in no sort admit, after so great a lapse of time and delay, and *laches*, on the part of the said plaintiff in respect of the said matters, he, the said plaintiff, has no right to the re-

lief sought by him against this defendant by reason of the matters, transactions, and things set forth and described in the plaintiff's bill.

And this defendant submits to this honorable court, that all and every the matters in the plaintiff's bill mentioned and complained of, are matters which may be determined at law; and with respect to which the said plaintiff is not entitled to any relief from a court of equity; and this defendant hopes he shall have the same benefit of this defence as if he had demurred to the said plaintiff's bill.

Without that, that there is any other matter, cause, or thing in the said plaintiff's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

W. M. MEREDITH,
JNO. MILES,
Of counsel for defendant.

Eli K. Price, the above defendant, being duly affirmed, doth depose and say, that the facts set forth in the foregoing answer, so far as they are stated of his own knowledge, are true, and so far as they are stated from the information of others, he believes them to be true.

ELI K. PRICE.

Affirmed and subscribed before me, this fifth day of October, A. D. 1850.

GEORGE PLITT,
U. S. commissioner.

Exhibit No. 1.

Memorandum of an agreement between J. Archer and C. Bispham, now residing in the city of Philadelphia, viz.

Whereas C. Bispham is about to embark in the ship Fanny for Gibraltar, Valparaiso, &c., as supercargo of said vessel, and on his arrival at Valparaiso it is to be determined whether he pursues the voyage from the Pacific ocean to Canton, or remains at Valparaiso as a partner in the house of Alsop, Wetmore & Cryder. Should it be arranged for C. Bispham to become a partner in the said house, in the place of John Cryder, either with or without making a voyage to Canton, it is hereby agreed and understood that the co-partnership, now existing between J. Archer and Charles Bispham, be continued for the space of five years, from and after the date of a co-partnership being agreed upon with Alsop & Wetmore, and C. Bispham, said Joseph and Charles to be equally concerned in the profit or loss in business, whether transact-

ed on the coast of the Pacific, the United States, or elsewhere. C. Bispham to remain at Valparaiso during the period of five years, (should the partnership between Alsop & Wetmore continue so long,) to transact commission business exclusively in conjunction with Alsop & Wetmore; J. Archer to manage the business and concerns of Archer & Bispham in the United States, &c. In case of the decease of either Joseph or Charles, previous to the expiration of five years, then and in such an event it is further agreed, that two years from and after such decease shall be allowed for closing said concern, during which period the profit or loss arising from the business of the survivor shall be equally divided, in the same manner as though both had been living, and at the expiration of said term of two years from and after such decease, the business and firm of Archer & Bispham to close.

CHAS. BISPHAM,
JOSEPH ARCHER.

Philadelphia, June 16th, 1828.

Exhibit No. 2.

From the long and repeated absence of Charles Bispham and Joseph Archer from the United States, it is believed the accounts of Archer & Bispham are in a state of some confusion, and in case of the death of both or either of them, some difficulty might be experienced in the settlement. This is, therefore, to constitute and appoint William Foster, esq., our joint agent in the settlement of all accounts between Charles Bispham and Joseph Archer, their heirs, executors, or assigns, and the said Wm. Foster's decision shall be final and binding on all parties concerned.

Canton, April 29, 1834.
(Signed) J. ARCHER.

Confirmed, Nov. 15, 1834. Valparaiso.
CHAS. BISPHAM.

Exhibit No. 3.

Whereas I, William Foster, by virtue of the authority in the annexed agreement, between Joseph Archer and Charles Bispham, lately trading under the firm of Archer & Bispham, contained, having examined the accounts of said firm referred to me by the parties, do award and determine that Joseph Archer is indebted, and should pay unto Charles Bispham, or his agent, the sum of fourteen thousand eight hundred and eight dollars $\frac{01}{100}$, in liquidation and full settlement between them, of all matters, claims, and demands relating to, or growing out of, the transactions of this late firm, so far as they are now known, ascertained, or believed to exist; but as liabilities may hereafter be established or ascertained, or claims recovered, not now known to exist, growing out of transactions during the partnership, for partnership account, it is to be understood that the same are not embraced in the foregoing settlement and determination by me as the agent and um-

pire of the parties, and especially any matter of such character contingent on the result of pending suits, is excepted from this adjustment of the affairs of said firm.

Witness my hand this 18th day of November, 1835.

WILLIAM FOSTER.

Witness—J. T. RYERSON.

Exhibit No. 4.

Supreme Court of the United States.

THE UNITED STATES, app'ts, vs. ELI K. PRICE, executor of Joseph Archer. } No. 137.

Appeal from the circuit court, U. S., for east. Pennsylvania.

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Pleas before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at Philadelphia, of October sessions, 1843, No. 3. It is thus contained:

The United States of America bring their bill against Eli K. Price, executor of Joseph Archer, deceased, late of the district aforesaid, a citizen of Pennsylvania, and Charles Bispham, a citizen of the State of New Jersey; and thereupon, Henry M. Watts, attorney of the said United States for the district aforesaid, and on their behalf, informeth and complains:

That a certain James L. Mifflin, and the said Joseph Archer, in his lifetime, together with a certain William Foster, in his lifetime, duly sealed and delivered to the said United States their bond in writing,

dated twenty-eight day of April, A. D. 1828, whereby they and each of them bound themselves, their heirs, executors, and administrators, jointly and severally, to pay to the United States aforesaid the sum of fifty thousand dollars. Conditioned that they, or either of them, or either of their heirs, executors, or administrators, should, on or before the twenty-eighth day of April, A. D. 1829, well and truly pay the sum of four thousand one hundred eighty-eight dollars sixty-two cents, as by the said bond, to which the said plaintiff craves leave to refer when produced, will appear.

That the said sum of four thousand one hundred eighty-eight dollars and sixty-two cents, at the time in the condition of the said bond mentioned, was not paid to the said United States; and thereupon the said United States commenced an action at law, in the district court of the United States in and for the district aforesaid, against the said James L. Mifflin, Joseph Archer, and William Foster, as of May sessions, 1829, No. 348; and on the eighteenth day of May, of the same year, obtained a judgment in their favor against the said defendants, for the sum of four thousand one hundred eighty-eight dollars and sixty-two cents, with interest from the time the said bond became due, together with the further sum of twenty-two dollars and sixty cents, the costs of said suit.

And the said plaintiff further showeth, that the said James L. Mifflin, and the said Joseph Archer, in his lifetime, together with the said Wm. Foster, in his lifetime, duly sealed and delivered their certain other bond, dated the first day of May, A. D. 1828, whereby they and each of them bound themselves, as aforesaid, to pay, as aforesaid, the further sum of fifty thousand dollars; conditioned that they, or either of them, or either of their heirs, executors, or administrators, should, on or before the 1st day of May, A. D. 1829, well and truly pay to the said United States the sum of one thousand nine hundred and fifty-five dollars, as by the said bond, to which the said plaintiff craves leave to refer when produced, will appear. That the said sum of one thousand nine hundred and fifty-five dollars, at the time in the condition of the said bond mentioned, was not paid to the said United States; and thereupon the said United States commenced an action at law in the district court aforesaid, against the said defendants, as of May session, 1829, No. 360; and on the eighteenth day of May, of the same year, obtained a judgment in their favor against said defendants for the sum of one thousand nine hundred and fifty-five dollars, with interest from the time the said bond became due, together with the sum of twenty-two dollars and sixty cents, the cost of said suit.

And the said plaintiff further showeth, that the said James L. Mifflin and the said Joseph Archer, in his lifetime, together with the said William Foster, in his lifetime, duly sealed and delivered their certain other bond, dated the twelfth day of April, A. D. 1828, whereby they, and each of them, bound themselves, as aforesaid, to pay, as aforesaid, the further sum of fifty thousand dollars; conditioned that they, or either of them, or either of their heirs, executors, or administrators,

should, on or before the twelfth day of October, A. D. 1829, well and truly pay the further sum of two thousand two hundred and ninety-seven dollars, as by the said bond, to which the said plaintiff craves leave to refer when produced, will appear. That the said sum of two thousand two hundred and ninety-seven dollars, at the time in the condition of the said bond mentioned, was not paid to the said United States; and thereupon the said United States commenced an action at law in the court aforesaid, against the said defendants, as of November session, 1829, No. 19; and on the 18th day of November, of the same year, obtained a judgment in their favor against the said defendants for the sum of two thousand two hundred and ninety-seven dollars, with interest from the time the said bond became due, together with the sum of twenty dollars and twenty cents, the costs of said suit.

And the said plaintiff doth further show, that the said defendants have not paid, nor hath either of them, their heirs, executors, or administrators, paid, to the said plaintiff, the principal sums with the arrears of interest and costs of the said several bonds and judgments aforesaid, or any part thereof, as they and each of them were jointly and severally bound to do; and that the said several sums of money, as aforesaid, remain wholly due and unpaid to the said plaintiff as aforesaid.

And the said plaintiff doth further show unto your honors, that the said James L. Mifflin, at the time and long before the death of the said Joseph Archer, was utterly insolvent and unable to pay and discharge his debts; and that the said James L. Mifflin was actually discharged, under the act of assembly of Pennsylvania, passed for the relief of insolvent debtors, as an insolvent debtor, before the death of the said Joseph Archer. And the said plaintiff doth further show, that, since the death of the said Joseph Archer, to wit, on day of , A. D. 184 , the said James L. Mifflin was discharged under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States."

And the said plaintiff doth further show, that the said Joseph Archer, in his lifetime, to wit, on or about the 22d day of January, A. D. 1833, by a certain instrument in writing, filed with the Secretary of the Treasury of the United States, and for the considerations therein stated, did assent that the privileges of a certain act of Congress, entitled "An act for the relief of certain insolvent debtors of the United States," should be extended to the said William Foster, without prejudice to his, the said Joseph Archer's, liability to the said United States for the amounts of the said several bonds and judgments as aforesaid, as by the said instrument in writing, to which the said plaintiff craves leave to refer when produced, will appear.

And the said plaintiff doth further show, that the said William Foster departed this life in the year of our Lord one thousand eight hundred and forty, utterly insolvent, and unable to pay and discharge his debts, and long before the death of the said Joseph Archer.

And the said plaintiff doth further show unto your honors, that the said Joseph Archer was, in his lifetime, and at the time of his decease,

seized in fee simple of, or well entitled to, certain freehold messuages, lands, and tenements, and possessed of, or well entitled to, a very considerable personal estate, consisting of household furniture, bonds, mortgages, and other securities for the payment of money, and of divers other effects, to a considerable amount or value in the whole; and being so seized and possessed of, or entitled to, such real estate and effects, and being of a sound and disposing mind, made and published his last will and testament, in writing, in the manner required by law, and duly nominated and appointed a certain Charles Taylor, of the city of Philadelphia, and the before named Charles Bispham, of New Jersey, his executors and trustees, with a proviso, that, if either of the said Charles Taylor or Charles Bispham should die or renounce the said appointment, then the aforesaid Eli K. Price should be an executor and trustee under the said will, in place of either of the said persons so dying or renouncing. That the said Joseph Archer departed this life on or about the 24th day of September, A. D. 1841, without revoking or altering his will as aforesaid.

That, upon the death of the said Joseph Archer, the said Charles Taylor, by an instrument in writing, dated the first day of October, A. D. 1841, and filed in the proper office, renounced his executorship and trusteeship as aforesaid, and the said Eli K. Price and Charles Bispham, the will and testament of the said Joseph Archer being duly proved in the proper register's office, took out letters testamentary upon the estate of the said testator, and by virtue thereof became possessed of all the personal estate and effects of the said testator at the time of his death, which it is alleged and believed were abundantly sufficient to pay all the debts and liabilities of the said testator; and if insufficient to pay all the debts and liabilities of the said testator, were abundantly sufficient to pay the amounts of the said several bonds and judgments as aforesaid, which, by the acts of Congress in such case made and provided, the said Eli K. Price and Charles Bispham, executors as aforesaid, were bound to pay, in preference to all other creditors of the said testator.

And the said plaintiff avers, that the whole of the principal sums, with the arrears of interest, and the costs of the said several bonds and judgments as aforesaid, are still due and unpaid to the said United States, and that, by law and equity, the said United States are entitled to be paid the said several sums of money due to them out of the assets of the estate of the said Joseph Archer, deceased, in the possession of the said Eli K. Price and Charles Bispham, in preference to all other creditors, legatees, and devisees. And the said plaintiff charges, that the said Eli K. Price and Charles Bispham have been selling and disposing of the estate and effects as aforesaid, in their possession, and thereby greatly diminishing and wasting the same, to the great injury and loss of the said United States, and in derogation to their rights.

And the said plaintiff doth further show, that, on the 25th day of February, 1843, on petition of the said Charles Bispham to the orphan's court of the county of Philadelphia, he, the said Charles Bisp-

ham, was discharged from his office of executor and trustee as aforesaid.

But now so it is, that the said Eli K. Price, executor as aforesaid, and Charles Bispham, combining, confederating, and contriving to wrong and injure the said United States in the premises, have refused, and still do refuse, to pay to the said United States the aforesaid several sums of money, although often called upon so to do.

In consideration thereof, and inasmuch as the said plaintiff can only have adequate relief in the premises in a court of equity, where matters of this kind are properly cognizable and relievable; to the end, therefore, that the said defendants, if they can show why the said plaintiffs should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make, to such of the several interrogatories herein after numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether the bonds aforesaid were not executed and delivered as aforesaid, and of the character and description as aforesaid.

2. Whether judgments at law were not obtained on the said bonds against the said defendants at the several dates, and for the several amounts, as before stated.

3. Whether the said judgments were not due and payable before the death of the said Joseph Archer.

4. Whether the said James L. Mifflin was not utterly insolvent, and unable to pay and discharge his debts, before the death of the said Joseph Archer.

5. Whether the said James L. Mifflin was not actually discharged as an insolvent debtor, by virtue of the insolvent laws of Pennsylvania, before the death of the said Joseph Archer, or under the acts of Congress in such cases provided.

6. Whether the said James L. Mifflin has not been discharged as a bankrupt, under the act of Congress establishing a uniform system of bankruptcy throughout the United States.

7. Whether the said Joseph Archer, either by himself or his attorney in fact, did not assent to the release of the said Wm. Foster from the said bonds and judgments aforesaid, without prejudice to his, the said Joseph Archer's, liability to the said United States in the said several bonds and judgments.

8. Whether the said William Foster did not die, in the year 1840, utterly insolvent, and whether the said Joseph Archer did not survive him, and whether the said Joseph Archer did not die on the twenty-fourth day of September, A. D. 1841.

9. Whether the said Eli K. Price and Charles Bispham did not take out letters testamentary on the estate of the said Joseph Archer, and exercise the office of executors as aforesaid, and when the said Charles Bispham was discharged from his said office.

10. What estate and effects passed by the said will and testament of

the said Joseph Archer into the hands and possession of the said executors, and the value thereof.

11. Whether the said executors have not been selling and disposing of the estate and effects, and thereby diminishing and wasting the assets in their hands, in derogation of the rights of the said plaintiff.

12. Whether the bonds and judgments aforesaid, with the arrears of interest and costs, do not each and all remain unpaid and unsatisfied to the said plaintiffs.

And that an account may be taken by and under the direction and decree of this honorable court, of what is due for the principal and interest, and costs of the several judgments as aforesaid, and that an account may also be taken of the personal estate and effects of the said testator, possessed or come into the hands of the said Eli K. Price and Charles Bispham, executors as aforesaid, and of the said Eli K. Price, executor of the said Joseph Archer, since the discharge of the said Charles Bispham as aforesaid. And that they shall be decreed to pay to the United States what shall appear to be due and owing to them for principal and interest, and costs of the said several bonds and judgments, out of the said testator's personal estate in a due course of administration; and in case the same shall be insufficient for the purpose, then out of the real estate of which the said testator died seized, to make good any such deficiency. And that the right of the said United States to a preference in payment out of the said assets, estate, and effects, and the proceeds thereof, may be decreed and established; and that the said United States may have further relief in the premises as the nature of the case shall require, and as to this honorable court shall seem meet.

And the said plaintiff suggests unto your honors, that, the premises considered, the court may grant a writ of subpœna, to be directed to the said Eli K. Price, executor of Joseph Archer, deceased, and the said Charles Bispham, if he shall come within the jurisdiction of the court, and their confederates when discovered, commanding them, and every of them, at a certain day, and under a certain pain, therein to be limited, to be and appear before this honorable court, and then and there to answer all and singular the premises, and to stand to, and abide, and perform such orders, directions, and decree as to this honorable court shall seem meet.

H. M. WATTS,
Attorney U. S.

Note.—The defendants, Eli K. Price, executor of Joseph Archer, deceased, and the said Charles Bispham, if he shall come within the jurisdiction of the court, are required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

The answer of Eli K. Price, executor of the last will and testament of Joseph Archer, deceased, to the bill of complaint of the United States of America.

This defendant, now and at all times hereafter, saving and reserving

unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said plaintiff's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, for answer unto the said—

First interrogatory in plaintiff's bill saith: That this defendant admits that the bonds stated and set forth in the said bill were executed and delivered by Joseph Archer in his lifetime, together with James L. Mifflin and William Foster in his lifetime, and said bonds are of the character and description as stated in said bill; and this defendant annexes copies of the said bonds, (marked A 1 to 3,) which he prays may be taken as a part of this answer. And this defendant avers, that the said bonds were executed and delivered to the plaintiffs by the obligors to secure the payment to the plaintiffs of the amounts specified in the respective conditions of the said bonds, being the amount of certain duties imposed by the plaintiffs according to law on divers goods and merchandise imported, and owned by the said James L. Mifflin, into the United States from foreign countries, in which bonds the said James L. Mifflin was the principal debtor, and the said Joseph Archer and Wm. Foster were sureties, according to the statute in such case made and provided.

And this defendant further answering to the second interrogatory in plaintiff's bill saith, that he admits that judgments at law were obtained on the said bonds jointly against the said James L. Mifflin, William Foster, and Joseph Archer, at the several dates and for the amounts as stated in the said bill. And this defendant avers, that after the rendition of the said judgments, to wit, on the twenty-second day of January, A. D. 1833, Louis McLane, secretary of the Treasury of the United States, by his certain writing signed by him, and sealed with the seal of the Treasury of the United States, released the said William Foster from all debts then due by him to the said United States, and to which release is appended a certificate, dated fifteenth day of March, A. D. 1833, signed by H. D. Gilpin, then attorney of the United States; that the condition on which the said release was granted had been performed by the said William Foster, copies of which release and certificate are appended to this answer, (marked B,) and which this defendant craves may be taken as part of this answer; and this defendant prays he may have leave to produce in court here said original release and certificate. And this defendant further avers, that after the rendition of the said judgments, to wit, on the sixth day of May, A. D. 1833, the said plaintiffs caused to be entered satisfaction of the said judgments respectively, of record in the district court for the United States for the eastern district of Pennsylvania, as to the said William Foster, as appears by the record of the said suits in which said judgments were obtained; a copy of which entry in each suit is hereto annexed, (marked C,) and which this defendant craves may be taken as part of this answer.

And this defendant further answering to the third interrogatory in

plaintiff's bill saith, that he admits that the said judgments were due and payable before the death of the said Joseph Archer, to wit, on the rendition thereof.

And this defendant further answering unto the fourth interrogatory in the said plaintiff's bill saith, that he does not know, but has been informed and believes, that the said James L. Mifflin was utterly insolvent, and unable to pay and discharge his debts before the death of the said Joseph Archer; but when he became so insolvent this defendant is unable to answer, either from information, knowledge, or belief.

And this defendant further answering unto the fifth interrogatory in the said plaintiff's bill saith, that he does not know, but has been informed and believes, that the said James L. Mifflin was discharged as an insolvent debtor by virtue of the insolvent laws of Pennsylvania, before the death of the said Joseph Archer, or under the act of Congress in such cases made and provided, but when this defendant does not know.

And this defendant further answering unto the sixth interrogatory in the said plaintiff's bill saith, that he does not know, but has been informed and believes, that the said James L. Mifflin was discharged as a bankrupt under the act of Congress, stated since the death of the said Joseph Archer.

And this defendant further answering unto the seventh interrogatory in the said plaintiff's bill saith, that he does not know whether the said Joseph Archer, either by himself or his attorney in fact, did or did not assent to the release of the said William Foster from the said bonds and judgments, as in the said bill stated, except by information derived from the said Joseph Archer in his lifetime, who, within the year next preceding his death, frequently assured this defendant that he had never known of, or consented to, any such release; and that he had never supposed authority therefor was contained or embraced in the power of attorney left by him with his said attorney, under which it has been suggested to the defendant the plaintiff may claim the assent of said Joseph Archer to have been given; and this defendant prays that the said power may be taken as part of this answer, (copy annexed, marked D.) And this defendant implicitly believes in the truth of the said assurances so made to him by the said Joseph Archer.

And the said defendant further answering unto the eighth interrogatory in the said plaintiff's bill saith, that he does not know, but has been informed and believes, that the said William Foster did die in the year 1840 utterly insolvent. The said Joseph Archer did survive him, and died on the 28th day of September, A. D. 1841.

And the said defendant further answering unto the said ninth interrogatory in the said plaintiff's bill saith, that he and Charles Bispham did take out letters testamentary to the estate of the said Joseph Archer, in the county of Philadelphia, and State of Pennsylvania, and this defendant and the said Charles Bispham did execute the office of executor of the last will and testament of the said Joseph Archer; and the said Charles Bispham was, on the prayer of his own petition, in the

orphan's court for the city and county of Philadelphia, on the 23d day of February, 1843, discharged from the office of executor aforesaid.

And the said defendant further answering to the tenth interrogatory in the said plaintiff's bill saith, that the estate and effects which were of the said Joseph Archer, deceased, which passed under his last will and testament into the hands and possession of this defendant, were greater in amount, and those which are now in his hands and possession are greater in amount, than the aggregate of the several sums claimed in said plaintiff's bill.

And the said defendant further answering unto the eleventh interrogatory in the said plaintiff's bill saith, that the said executors, and this defendant since he has been sole executor, have sold and disposed of part of the estate which was of the said Joseph Archer; but did not thereby diminish and waste the assets in their hands, nor were such sales in derogation of the rights of the plaintiffs. And this defendant further avers, that no part of the said estate has been lost or wasted, to his knowledge and belief; and the attorney of the plaintiffs well knows that ample funds have been set aside agreeably to law to meet all the claims of the plaintiffs against the estate of said Joseph Archer, should such claims be established.

And this defendant further answering unto the twelfth interrogatory in the said plaintiff's bill saith, that he does not know, nor can he say, whether the bonds and judgments aforesaid, with the arrearages of interest and costs, each and all remain unpaid to the plaintiffs; in point of fact he avers, that partial payments thereof were made to plaintiffs, to wit, on the bond first in plaintiff's bill mentioned, on the sixteenth March, 1833, one hundred and twelve dollars and eighty-four cents; on the bond second therein mentioned, on same date, one thousand four hundred and sixty-three dollars and ninety-six cents; and on the bond last therein mentioned, on same date, two hundred and seventy-four dollars; and whether the said bonds and judgments are unsatisfied to or by the said plaintiffs, or released or discharged by the said plaintiffs, or by operation of law, this defendant cannot answer, but submits himself upon the facts in this his answer stated and set forth to the adjudication of this honorable court. And this defendant further answering saith, that the said plaintiffs, on the said judgment in plaintiff's bill stated, for the sum of four thousand one hundred and eighty-eight dollars and sixty-two cents, to May sessions, 1829, No. 348, recovered on the sixteenth day of June, 1829, in the said district court, issued a writ of fieri facias against the defendants therein named, returnable to August sessions, 1829, of the said court, which writ is not returned of record in the said court; and the said plaintiffs, on the said judgment in plaintiff's bill stated, for the sum of one thousand nine hundred and fifty-five dollars, to May sessions, 1829, No. 360, recovered on the said day, in the same court, issued a writ of fieri facias against the said defendants, returnable August sessions, 1829, which writ is not returned of record in the said court. And the records of the said court in the premises this defendant craves leave to produce in court here, and he

submits whether a presumption of payment of the said judgments does not arise.

And this defendant further avers, that the said plaintiffs, upon the judgment in the said bill stated, to November sessions, 1829, No. 19, recovered on the sixteenth day of November, 1829, in said court, for the sum of two thousand two hundred and ninety-seven dollars, have not since the rendition of the same issued or proceeded to execution against the said James L. Mifflin; and this defendant submits, that after so great delay and *laches* in respect of all said judgments, the plaintiffs can have no remedy in equity against him, this defendant, an executor of the said Joseph Archer, deceased, by reason of any thing set forth in the said plaintiff's bill; and if any remedy they have, it is at law upon the said judgments.

And this defendant submits to this honorable court, that all and every the matter in the said plaintiff's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said plaintiffs are not entitled to any relief from a court of equity; and this defendant prays that he may have the same benefit of this defence as if he had demurred to the said plaintiff's bill; and this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter or thing in the said plaintiff's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

J. MEREDITH,
JNO. MILES,
For defendant.

Eli K. Price, the above defendant, being duly affirmed, doth depose and say, that the facts above set forth in the above answer, as of his own knowledge, are true; and so far as they are stated from the information of others, he believes them to be true.

ELI K. PRICE.

Affirmed and subscribed before me this fourth day of October, A. D. 1843, in open district court, U. S.

FRAS. HOPKINSON,
Clerk of District Court.

No. 2217.

Know all men by these presents, that we, J. L. Mifflin, and J. Archer, and W. Foster, are held and firmly bound unto the United States

of America, in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administers, jointly and severally, firmly by these presents. Sealed with our seals, dated this 28th day of April, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 1.—A, No. 1.

The condition of this obligation is such, that if the above bounden J. L. Mifflin, and J. Archer, and W. Foster, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the twenty-eighth day of April, 1829, well and truly pay, or cause to be paid, unto the collector of customs for the district of Philadelphia, for the time being, the sum of four thousand one hundred and eighty-eight dollars sixty-two cents, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden J. L. Mifflin and J. Archer, as imported in the ship Nassau, from Canton, as per entry dated this day, then the above obligation to be void; otherwise to remain in full force and virtue.

$4,188 62.

JAMES L. MIFFLIN, [L. S.]
WILLIAM FOSTER, [L. S.]
JOSEPH ARCHER. [L. S.]

Sealed and delivered in presence of—
D. GIBSON.

No. 2329.

Know all men by these presents, that we, J. L. Mifflin, J. Archer, and Wm. Foster, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this first day of May, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 2.—A, No. 2.

The condition of this obligation is such, that if the above bounden J. L. Mifflin, J. Archer, and W. Foster, or either of them, or either of the heirs, executors, or administrators, shall and do, on or before the first day of May, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the time being, the sum of nineteen hundred and fifty-five dollars, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden J. L. Mifflin, as imported in the ship Nassau, from Canton, as per entry,

dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$1,955.

JAMES L. MIFFLIN, [L. S.]
JOSEPH ARCHER, [L. S.]
WILLIAM FOSTER. [L. S.]

Sealed and delivered in the presence of—

No. 1767.

Know all men by these presents, that we, J. L. Mifflin, Joseph Archer, and W. Foster, are held and firmly bound, unto the United States of America, in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this twelfth day of April, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 3.—A, No. 3.

The condition of this obligation is such, that if the above bounden J. L. Mifflin, Jos. Archer, and W. Foster, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the twelfth day of October, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the time being, the sum of twenty-two hundred and ninety-seven dollars, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden James L. Mifflin, as imported in the ship Nassau, from Canton, as per entry dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$2,297.

JAMES L. MIFFLIN, [L. S.]
JOSEPH ARCHER, [L. S.]
WILLIAM FOSTER. [L. S.]

Sealed and delivered in the presence of—
D. GIBSON.

To all to whom these presents shall come, I, Louis McLane, secretary of the Treasury of the United States, send greeting:

Whereas, William Foster, of Philadelphia, in the eastern district of Pennsylvania, has preferred his petition to the Secretary of the Treasury of the United States to be released from certain debts due by him to the United States on the first day of January, 1831, and a report in writing of the circumstances of the case having been transmitted to the said Secretary by the commissioners of insolvency for said district, pursuant to the provisions of the statute of the United States, passed the second day of March, 1831, entitled "an act for the relief of certain insolvent debtors of the United States."

B.—B.

And whereas, I, the said secretary of the Treasury, having maturely considered the said petition and report, and it being proved to my satisfaction that the said William Foster was, on the first day of January, 1831, a debtor to the United States in a sum of money which he is unable to pay, that he hath done no act fraudulently to deprive the United States of their legal property, that he has not been guilty of any fraud, nor made any conveyance, real or personal, in trust for himself, or with intent to defraud the United States, or whereby to expect any benefit or advantage to himself or family:

And whereas the said Joseph Archer, co-surety of the said William Foster, by his attorney, Samuel Archer, duly constituted, has filed with the Secretary of the Treasury his consent in writing, that the privileges of the said acts may be extended to the said William Foster without prejudice to his liability:

Now, therefore, know ye, that I, the said secretary of the Treasury, in consideration of the premises, and by virtue of the power and authority vested in me by the aforesaid statute, and by an act of Congress, entitled "an act in addition to an act for the relief of certain insolvent debtors of the said United States," approved the fourteenth day of July, 1832, do hereby decide to release the said from the said debt, upon condition that the said Wm. Foster shall assign, transfer, and secure to the United States, in manner to be approved by the attorney of the United States, for the eastern district of Pennsylvania, all and each of the debenture certificates he holds, or which may be held by him; and also six acres of cedar swamp to him appertaining and belonging, and situate in Burlington county, in the State of New Jersey.

Given under my hand and seal of office, at the city of Washington, this twenty-second day of January, in the year of our Lord one thousand eight hundred and thirty-three, and the fifty-seventh year of the independence of the United States.

LOUIS McLANE, [SEAL.]
Secretary of the Treasury.

I certify that William Foster has delivered up the debenture certificates held by and for him, and also has conveyed to Virgil Maxcy, solicitor of the Treasury of the United States of America, his successors and assigns forever, in trust for the said United States of America, by indenture bearing date the twentieth day of February, 1833, and recorded in the clerk's office of the county of Burlington, at Mount Holly, in book D 3, of deeds, page 614, &c., all his interest, right, title, claim, and demand, in and to all the real estate in any wise to him appertaining, in Burlington county, in the State of New Jersey.

H. D. GILPIN,
Atttorney of the U. S.

Philadelphia, 15th day of March, 1833.

C.

Copy of entry of satisfaction of record referred to in the foregoing answer in the several suits.

D. C. U. S., eastern district of Pennsylvania, to May S., 1829.

THE UNITED STATES OF AMERICA vs. JAMES L. MIFFLIN, Wm. Foster, and Jos. Archer. } No. 348.

SAME vs. SAME. } Ibid. No. 360.

SAME vs. SAME. } Ibid. To Nov. S., 1829. No. 19.

1833, May 6. Costs paid. This judgment is satisfied as to the defendant, William Foster, by virtue of a release granted by the Secretary of the Treasury, under the provisions of the act for the relief of certain insolvent debtors of the United States, and in consideration of the performance, by the said Wm. Foster, of all the conditions made necessary by the said release as part of the terms on which it was granted, provided that this judgment is to remain unimpaired as to the other defendants, according to the provision of the said acts and proceedings preliminary to said release.

D.

UNITED STATES OF AMERICA,
Commonwealth of Pennsylvania.

Know all men by these presents, that on the day of the date hereof, before me, Clement C. Biddle, esq., notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, by lawful authority duly commissioned and sworn, and by law authorized to receive proof and acknowledgments of letters of attorney and procuration, and in presence of the subscribing witnesses, personally came and appeared Joseph Archer, of the city of Philadelphia, merchant, and declared to have known, ordained, nominated, constituted, and appointed, and by these presents doth make, ordain, nominate, constitute, and appoint, and in his place and stead put and depute his father, Samuel Archer, of the said city of Philadelphia, merchant, to be his true and lawful attorney, giving, and by these presents granting, unto his said attorney, full power and authority for the said constituent, in his name and behalf, and to his use, to ask, demand, and sue for, and by all lawful ways and means to recover and receive of and from all and every person and persons, bodies politic or corporate, or governments, whatsoever and wheresoever, all and every sum and sums of money, goods, and wares, merchandises, effects, debts, and demands, whatsoever now

of America, in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administers, jointly and severally, firmly by these presents. Sealed with our seals, dated this 28th day of April, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 1.—A, No. 1.

The condition of this obligation is such, that if the above bounden J. L. Mifflin, and J. Archer, and W. Foster, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the twenty-eighth day of April, 1829, well and truly pay, or cause to be paid, unto the collector of customs for the district of Philadelphia, for the time being, the sum of four thousand one hundred and eighty-eight dollars sixty-two cents, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden J. L. Mifflin and J. Archer, as imported in the ship Nassau, from Canton, as per entry dated this day, then the above obligation to be void; otherwise to remain in full force and virtue.

$4,188 62.

JAMES L. MIFFLIN, [L. S.]
WILLIAM FOSTER, [L. S.]
JOSEPH ARCHER. [L. S.]

Sealed and delivered in presence of—
D. GIBSON.

No. 2329.

Know all men by these presents, that we, J. L. Mifflin, J. Archer, and Wm. Foster, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this first day of May, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 2.—A, No. 2.

The condition of this obligation is such, that if the above bounden J. L. Mifflin, J. Archer, and W. Foster, or either of them, or either of the heirs, executors, or administrators, shall and do, on or before the first day of May, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the time being, the sum of nineteen hundred and fifty-five dollars, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden J. L. Mifflin, as imported in the ship Nassau, from Canton, as per entry,

dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$1,955.

JAMES L. MIFFLIN, [L. S.]
JOSEPH ARCHER, [L. S.]
WILLIAM FOSTER. [L. S.]

Sealed and delivered in the presence of—

No. 1767.

Know all men by these presents, that we, J. L. Mifflin, Joseph Archer, and W. Foster, are held and firmly bound, unto the United States of America, in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this twelfth day of April, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 3.—A, No. 3.

The condition of this obligation is such, that if the above bounden J. L. Mifflin, Jos. Archer, and W. Foster, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the twelfth day of October, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the time being, the sum of twenty-two hundred and ninety-seven dollars, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden James L. Mifflin, as imported in the ship Nassau, from Canton, as per entry dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$2,297.

JAMES L. MIFFLIN, [L. S.]
JOSEPH ARCHER, [L. S.]
WILLIAM FOSTER. [L. S.]

Sealed and delivered in the presence of—
D. GIBSON.

To all to whom these presents shall come, I, Louis McLane, secretary of the Treasury of the United States, send greeting:

Whereas, William Foster, of Philadelphia, in the eastern district of Pennsylvania, has preferred his petition to the Secretary of the Treasury of the United States to be released from certain debts due by him to the United States on the first day of January, 1831, and a report in writing of the circumstances of the case having been transmitted to the said Secretary by the commissioners of insolvency for said district, pursuant to the provisions of the statute of the United States, passed the second day of March, 1831, entitled "an act for the relief of certain insolvent debtors of the United States."

B.—B.

And whereas, I, the said secretary of the Treasury, having maturely considered the said petition and report, and it being proved to my satisfaction that the said William Foster was, on the first day of January, 1831, a debtor to the United States in a sum of money which he is unable to pay, that he hath done no act fraudulently to deprive the United States of their legal property, that he has not been guilty of any fraud, nor made any conveyance, real or personal, in trust for himself, or with intent to defraud the United States, or whereby to expect any benefit or advantage to himself or family:

And whereas the said Joseph Archer, co-surety of the said William Foster, by his attorney, Samuel Archer, duly constituted, has filed with the Secretary of the Treasury his consent in writing, that the privileges of the said acts may be extended to the said William Foster without prejudice to his liability:

Now, therefore, know ye, that I, the said secretary of the Treasury, in consideration of the premises, and by virtue of the power and authority vested in me by the aforesaid statute, and by an act of Congress, entitled "an act in addition to an act for the relief of certain insolvent debtors of the said United States," approved the fourteenth day of July, 1832, do hereby decide to release the said from the said debt, upon condition that the said Wm. Foster shall assign, transfer, and secure to the United States, in manner to be approved by the attorney of the United States, for the eastern district of Pennsylvania, all and each of the debenture certificates he holds, or which may be held by him; and also six acres of cedar swamp to him appertaining and belonging, and situate in Burlington county, in the State of New Jersey.

Given under my hand and seal of office, at the city of Washington, this twenty-second day of January, in the year of our Lord one thousand eight hundred and thirty-three, and the fifty-seventh year of the independence of the United States.

LOUIS McLANE, [SEAL.]
Secretary of the Treasury.

I certify that William Foster has delivered up the debenture certificates held by and for him, and also has conveyed to Virgil Maxcy, solicitor of the Treasury of the United States of America, his successors and assigns forever, in trust for the said United States of America, by indenture bearing date the twentieth day of February, 1833, and recorded in the clerk's office of the county of Burlington, at Mount Holly, in book D 3, of deeds, page 614, &c., all his interest, right, title, claim, and demand, in and to all the real estate in any wise to him appertaining, in Burlington county, in the State of New Jersey.

H. D. GILPIN,
Atttorney of the U. S.

Philadelphia, 15th day of March, 1833.

C.

Copy of entry of satisfaction of record referred to in the foregoing answer in the several suits.

D. C. U. S., eastern district of Pennsylvania, to May S., 1829.

THE UNITED STATES OF AMERICA vs. JAMES L. MIFFLIN, Wm. Foster, and Jos. Archer. } No. 348.

SAME vs. SAME. } Ibid. No. 360.

SAME vs. SAME. } Ibid. To Nov. S., 1829. No. 19.

1833, May 6. Costs paid. This judgment is satisfied as to the defendant, William Foster, by virtue of a release granted by the Secretary of the Treasury, under the provisions of the act for the relief of certain insolvent debtors of the United States, and in consideration of the performance, by the said Wm. Foster, of all the conditions made necessary by the said release as part of the terms on which it was granted, provided that this judgment is to remain unimpaired as to the other defendants, according to the provision of the said acts and proceedings preliminary to said release.

D.

UNITED STATES OF AMERICA,
Commonwealth of Pennsylvania.

Know all men by these presents, that on the day of the date hereof, before me, Clement C. Biddle, esq., notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, by lawful authority duly commissioned and sworn, and by law authorized to receive proof and acknowledgments of letters of attorney and procuration, and in presence of the subscribing witnesses, personally came and appeared Joseph Archer, of the city of Philadelphia, merchant, and declared to have known, ordained, nominated, constituted, and appointed, and by these presents doth make, ordain, nominate, constitute, and appoint, and in his place and stead put and depute his father, Samuel Archer, of the said city of Philadelphia, merchant, to be his true and lawful attorney, giving, and by these presents granting, unto his said attorney, full power and authority for the said constituent, in his name and behalf, and to his use, to ask, demand, and sue for, and by all lawful ways and means to recover and receive of and from all and every person and persons, bodies politic or corporate, or governments, whatsoever and wheresoever, all and every sum and sums of money, goods, and wares, merchandises, effects, debts, and demands, whatsoever now

is, or are, or shall, or may be hereafter, due, owing, belonging to, detained from, or payable unto him, the said constituent, Joseph Archer, whether by bond, note, bill, book account, consignments, or for or by what other ways or means, none excepted or reserved; and to that end to state, settle, and adjust all accounts in relation thereto, and to execute and deliver requisite and sufficient receipts, releases, acquittances, and discharges, and to do, transact, execute, and perform all matters, and things of every kind relative to the individual concerns, business, and affairs of him, the said constitutent; to enter and clear all vessels, goods, and effects, and transact all other custom-house business; to sign, seal, and deliver all bonds for securing the payment of duties in relation to debentures as principal, or as surety, and all and every other description of bonds; to draw notes, checks, and bills, and to draw, endorse, accept, and negotiate all bills, notes, checks, orders, or other securities; also, if need be, to appear before all judges and justices in any court or courts of law or equity, or other competent tribunal or tribunals whatsoever and wheresoever, and there to do, say, pursue, implead, arrest, attach, and prosecute, or to answer and defend as occasion shall or may require; and to compound, compromise, conclude, and agree for the same by arbitration or otherwise; and moreover, in and about the premises, to do, transact, execute, and perform all such other acts, matters, and things, as shall be deemed needful and most beneficial, in as full and complete a manner, to all intents and purposes, as the said constituent might or could do if personally present; also, with power of substitution and revocation, hereby ratifying and confirming all and whatsoever his said attorney shall or may lawfully do by virtue of these presents.

In witness whereof the said constituent hath hereunto set his hand and seal; done and passed at Philadelphia aforesaid, the seventeenth day of September, in the year of our Lord one thousand eight hundred and thirty.

JOSEPH ARCHER.

Sealed and delivered in presence of us—
LEWIS WILD,
CLEMENT C. BIDDLE.

In premissorum fidem—
CLEMENT C. BIDDLE, *Notary public.*

Rendered September 24, 1832.

I, George Smith, recorder of deeds, &c., for the city and county of Philadelphia, do certify, that the above and foregoing is a true copy of a certain instrument of writing remaining of record in my office, in letter of attorney book A. M., No. 1, page 163, &c.

Witness my hand and seal of office, this second day of August, 1841.
For GEORGE SMITH,
JOSHUA SPERING.

The replication of Henry M. Watts, attorney of the United States for the district aforesaid, to the answer of Eli K. Price, executor as aforesaid, defendant.

This repliant, saving and reserving unto these United States all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for the replication thereto saith, that he will aver and prove the said bill to be true and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain and untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct. And humbly prays, as in and by the said bill, on behalf of the said United States, he hath already prayed.

H. M. WATTS,
Attorney U. S., E. D. Pa.

Afterwards, to wit, on the 23d day of October, 1846, the following agreement is filed, to wit:

It is agreed that the replication to the defendant's answer filed by the complainants be withdrawn, and that this case be set down for hearing upon bill and answer, and the exhibits attached thereto.

T. M. PETTIT, *for U. S.*,
JNO. MILES,
MEREDITH,
Solicitors for respondent.

Afterwards, to wit, on the twenty-seventh day of October, A. D. 1846, this case came on be heard upon the bill, answer, and the exhibits attached to the answer filed, and the counsel for the complainants and respondent were fully heard.

Whereupon it is ordered and decreed that the complainants' bill be dismissed, and that the defendant is dismissed.

Afterwards, to wit, on the fourth day of December, A. D. 1846, an agreement in the words and figures following is filed, to wit:

October session, 1843.—*No.* 3.

THE UNITED STATES OF AMERICA,
vs.
ELI K. PRICE, executor of the last will and testament of Joseph Archer, deceased. } In equity.

It is hereby agreed, that the answer of the defendant in the above cause be amended by attaching the annexed paper or certificate from the collector's office, custom-house, Philadelphia, (marked A, No. 4,)

and the annexed copy of the original entry of importation by James L. Mifflin, (marked A, No. 5,) to the said answer as a part thereof, and as exhibits in the said cause, to have the same effect as if they had formed a part of the said answer when originally filed.

T. M. PETTIT,
Attorney of the U. S.

November 30, 1846.

JNO. MILES,
W. M. MEREDITH,
Of counsel for defendant.

A, No. 4.

CUSTOM-HOUSE, PHILADELPHIA, *Collector's office.*

I certify, that James L. Mifflin is the principal, and William Foster and Joseph Archer are the sureties on bond No. 2217, (now in suit,) taken for duties accruing on merchandise imported into this district in the ship Nassau, and entered by the said James L. Mifflin, April 28th, 1828. Conditioned for the payment of dollars, 4,188 $\frac{62}{100}$, on the 28th April, 1829.

Witness my hand and seal of office, this twenty-third day of Novem-
[L. S.] ber, 1846.

CHARLES TREICHEL, *Dep. col.*

A, No. 5.

Entry of merchandise imported by J. L. Mifflin in the ship Nassau, whereof Hewitt is master, from Canton, on the 12th day of April, 1828, which teas have been stored for the benefit of long credit, and are now entered for delivery.

Marks.	Number.	Packages and contents.
M.	8	Twenty-five chests Y. Hyson.
	15	Seventeen " "
	18	Three " "
	11	Thirty half " "
	17	Ten " "
	5	Thirty " " (Ex'd 30 chests Hyson tea, 16th May, 1828—1885.)
	1	Forty twenty-five Catty boxes Pouchong.
	2	One chest Young Hyson.
	3	One " " "
	7	One " " "
	9	One " " "
	10	One " " "

ENTRY—Continued.

Marks.	Number.	Packages and contents.		
	13	One chest Young Hyson.		
	14	One " " "		
	19	One " Hyson Skin.		
	20	One " " "		
[M.]		Five 5 Catty boxes G. Powder tea. (Ex'd. See over.)		
	19	Doll. 34	a 50 p. c.	17 00
	20	" 9,636	40	3,854 40
	20	" 124	28	34 72
		" 1,130	25	282 50
				$4,188 62

Philadelphia, 28th April, 1828.
60—Signed, JAMES L. MIFFLIN.

I certify that the foregoing, with the notes and memoranda on the back, is a just and true copy of the original entry on file in this office.
CHARLES TREICHEL,
Deputy collector.

CUSTOM-HOUSE, *district of Philadelphia, Nov.* 5, 1846.

Endorsed.

12th April, 1828, ship Nassau, Hewitt.

James L. Mifflin, put in suit, May 1, 1829, B. 802, 12 mo., 2217.
In part payment of bond No. 1768.
Tea for store, April 28, 1828.
$4,188 62 (See the back.)

Bond for $4,188 62.
Deb. cert.
894—May 10–28, $64 84
1901—Sep. 19–28, 48 00
$112 84
March 16, 1833.

Ex'd 5 (5 catty) boxes Gunpowder tea, May 10, 1828, 133.
Signed, JOS. ARCHER,
WM. FOSTER.

Whereupon, afterwards, to wit, on the twenty-eighth day of January, A. D. 1847, the complainants aforesaid, by their attorney afore-

said, pray leave to appeal, from the decree of said court, to the Supreme Court of the United States, which is allowed.

UNITED STATES, *Eastern district of Pennsylvania.*

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit in equity, therein lately depending, between the United States of America, complainants, and Eli K. Price, executor, &c., and others, defendants.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said court, at Philadelphia, this twenty-
[L. S.] ninth day of March, A. D. 1847, and in the seventy-first year of the independence of the said United States.

GEORGE PLITT,
Clerk of circuit court.

Filed April 7, 1847.

Supreme Court of the United States.

THE UNITED STATES, appellants,
vs.
ELI K. PRICE, executor of Joseph Archer. } No. 138.

Appeal from the circuit court, U. S., for east[ern] Pennsylvania.

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Pleas before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at Philadelphia, of October session, 1843, No. 4.—It is thus contained:

To the honorable Henry Baldwin and Archibald Randall, justices of said court.

The United States of America bring their bill against Eli K. Price, executor of Joseph Archer, deceased, a citizen of Pennsylvania, and Charles Bispham, a citizen of the State of New Jersey. And thereupon Henry M. Watts, attorney of the said United States for the district

aforesaid, and on their behalf, informeth and saith: That a certain James L. Mifflin and the said Joseph Archer, in his lifetime, duly sealed and delivered their bond to the said United States, dated the 7th day of May, A. D. 1828, whereby they and each of them bound themselves, their heirs, executors, and administrators, jointly and severally, to pay to the United States aforesaid the sum of fifty thousand dollars, conditioned that they or either of them, or either of their heirs, executors, or administrators, should, on and before the 7th day of May, 1829, well and truly pay the sum of one thousand four hundred and eighty dollars, as by their bond, to which said plaintiff craves leave to refer, when produced, will appear. That the said sum of one thousand four hundred and eighty dollars, at the time in the condition of the said bond mentioned, was not paid, and thereupon the said United States commenced an action at law, in the district court of the United States, in and for the district aforesaid, against the said James L. Mifflin and Joseph Archer; and on the eighteenth day of May, A. D. 1829, obtained a judgment in their favor against the said defendants for the sum of one thousand four hundred and eighty dollars, with interest from the time the said bond became due, and the further sum of twenty dollars and sixty cents, the costs of said suit.

And the said plaintiff further showeth, that the said James L. Mifflin and the said Joseph Archer, in his lifetime, duly sealed and delivered their certain other bond, dated the 26th day of May, A. D. 1828, whereby they and each of them bound themselves, as aforesaid, to pay as aforesaid the further sum of fifty thousand dollars, conditioned that they or either of them, or either of their heirs, executors, or administrators, should, on or before the 26th day of May, 1829, well and truly pay to the United States the sum of six hundred dollars, as by the said bond, to which the said plaintiff craves leave to refer, when produced, will appear. That the said sum of six hundred dollars at the time in the condition of the said bond mentioned was not paid, and thereupon the said United States commenced an action at law, in the court aforesaid, against the said defendants, and on the 25th day of August, 1829, obtained a judgment in their favor against the said defendants for the sum of six hundred dollars, with interest from the time that the said bond became due, and the further sum of twenty dollars and sixty cents, costs of the said suit.

And the said plaintiff further showeth, that the said James L. Mifflin and the said Joseph Archer, in his lifetime, duly sealed and delivered their certain other bond, dated the 31st day of May, A. D. 1828, whereby they and each of them bound themselves, as aforesaid, to pay as aforesaid the further sum of fifty thousand dollars, conditioned that they or either of them, or either of their heirs, executors, or administrators, should, on or before the 31st day of May, A. D. 1829, well and truly pay the sum of five thousand one hundred and ninety-four dollars and eighty cents, as by the said bond, to which the said plaintiff craves leave to refer, when produced, will appear.

That the said sum of five thousand one hundred and ninety-four

dollars and eighty cents at the time in the condition of the said bond mentioned was not paid, and thereupon the said United States commenced an action at law in the court aforesaid, and obtained a judgment in their favor against the said defendants on the 25th day of August, A. D. 1829, for the sum of five thousand one hundred and ninety-four dollars and eighty cents, with interest from the time the said bond became due, and the further sum of twenty dollars and sixty cents, the costs of said suit.

And the said plaintiff further showeth, that the said James L. Mifflin and the said Joseph Archer, in his lifetime, duly sealed and delivered their certain other bond, dated the 30th day of June, A. D. 1828, whereby they and each of them bound themselves, as aforesaid, to pay as aforesaid the further sum of fifty thousand dollars, conditioned that they or either of them, or either of their heirs, executors, or administrators, should, on or before the 30th day of June, 1829, well and truly pay the further sum of five hundred and twenty-eight dollars and ten cents, as by the said bond, to which the said plaintiff craves leave to refer, when produced, will appear.

That the said sum of five hundred and twenty-eight dollars and ten cents at the time in the condition of the said bond mentioned was not paid, and thereupon the said United States commenced an action at law in the court aforesaid, and on the 25th day of August, A. D. 1829, obtained a judgment in their favor against the said defendants, for the sum of five hundred and twenty-eight dollars and ten cents, with interest from the time the said bond became due, and the further sum of twenty dollars and sixty cents, costs of the said suit.

And the said plaintiff further showeth, that the said James L. Mifflin and the said Joseph Archer, in his lifetime, duly sealed and delivered their certain other bond, dated the 8th day of July, A. D. 1828, whereby they and each of them bound themselves, as aforesaid, to pay as aforesaid the further sum of fifty thousand dollars, conditioned that they or either of them, or either of their heirs, executors, or administrators, should, on or before the 8th day of July, A. D. 1829, well and truly pay the further sum of three thousand seven hundred and sixty-seven dollars and fifty cents, as by the said bond, to which the said plaintiff craves leave to refer, when produced, will appear.

That the said sum of three thousand seven hundred and sixty-seven dollars and fifty cents at the time in the condition of said bond mentioned was not paid, and thereupon the said United States commenced an action at law in the court aforesaid, and on the 25th day of August, A. D. 1829, obtained a judgment in their favor against the said defendants for the sum of three thousand seven hundred and sixty-seven dollars and fifty cents, with interest from the time the said bond became due, and the further sum of twenty dollars and sixty cents, the costs of the said suit.

And the said plaintiffs doth further show unto your honors, that the said defendants have not paid, nor hath either of them, their heirs, executors, or administrators, paid to the said plaintiff the principal sums,

with the arrears of interest, and costs of the said several bonds and judgments aforesaid, or any part thereof, as they and each of them were jointly and severally bound to do; and that the several sums of money as aforesaid remain wholly due and unpaid to the said plaintiffs as aforesaid.

And the said plaintiff doth further show unto your honors, that the said James L. Mifflin, at the time, and long before the death of the said Joseph Archer, was utterly insolvent and unable to pay and discharge his debts. And that the said James L. Mifflin was actually discharged under the acts of assembly of Pennsylvania, passed for the relief of insolvent debtors, as an insolvent debtor before the death of the said Joseph Archer; and the said plaintiff doth further show, that since the death of the said Joseph Archer the said James L. Mifflin, to wit, on the day of , A. D. 184 , was discharged under the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States."

And the said plaintiff doth further show unto your honors, that the said Joseph Archer was, in his lifetime, and at the time of his decease, seized in fee simple, or well entitled to certain freehold messuages, land, and tenements, and possessed of or well entitled to a very considerable personal estate, consisting of household furniture, bonds, mortgages, and other securities for the payment of money and stocks, and divers other effects, to a considerable amount or value, and being of a sound and disposing mind, made and published his last will and testament in writing, in the manner required by law, and duly nominated and appointed a certain Charles Taylor, of the city of Philadelphia, and the aforenamed Charles Bispham, his executors and trustees, with a proviso that if either the said Charles Taylor or Charles Bispham should die or renounce said appointment, then the said Eli K. Price should be an executor and trustee under the said will, in place of either of the said persons so dying or renouncing. That the said Joseph Archer departed this life on or about the 24th day of September, A. D. 1841, without revoking or altering his will as aforesaid. That upon the death of the said Joseph Archer the said Charles Taylor, by an instrument in writing, dated the first day of October, 1841, and filed in the proper office, renounced his executorship and trusteeship as aforesaid, and the said Eli K. Price and Charles Bispham, the will and testament of the said Joseph Archer being duly proved in the proper register's office, took out letters testamentary upon the estate of the said testator, and by virtue thereof became possessed of all the personal estate and effects of the said testator at the time of his death; which it is alleged and believed were abundantly sufficient to pay all the debts of the said testator; and, if insufficient, were abundantly so to pay the amounts of the said several bonds and judgments as aforesaid, which, by the acts of Congress in such cases made and provided, the said Eli K. Price and Charles Bispham, executors as aforesaid, were bound to pay in preference to all other creditors of the said testator.

And the said plaintiff avers, that the whole of the principal sums,

with the arrears of interest and the costs of the said several bonds and judgments as aforesaid, are still due and payable to the said United States, and that by law and equity the said United States are entitled to be paid the said several sums due to them out of the assets of the estate of the said Joseph Archer, deceased, in the possession of the said Eli K. Price and Charles Bispham, in preference to all other creditors, legatees, and devisees. And the said plaintiff charges, that the said Eli K. Price and Charles Bispham have been selling and disposing of the estate and effects as aforesaid in their possession, and thereby greatly diminishing and wasting the same, to the great injury and loss of the said United States, and in derogation of their rights.

And the said plaintiff doth further show, that on the 25th day of February, A. D. 1843, on the petition of the said Charles Bispham to the orphan's court of the county of Philadelphia, he, the said Charles Bispham, was discharged from his office of executor and trustee as aforesaid.

But now, so it is, that the said Eli K. Price, executor as aforesaid, and the said Charles Bispham, combining, confederating, and contriving to wrong and injure the said United States in the premises, have refused, and still do refuse, to pay to the said United States the aforesaid several sums of money, although often requested so to do.

In consideration thereof, and inasmuch as the said plaintiff can only have relief in the premises in a court of equity, where matters of this kind are properly cognizable and relievable; to the end, therefore, that the said defendants, if they can, show why the said plaintiffs should not have the relief hereby prayed for, and may upon their several and respective corporal oaths, and according to the best of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say—

1. Whether the bonds were not executed and delivered as aforesaid, and of the character and description as aforesaid?

2. Whether judgments at law were not obtained on the said bonds, against the said defendants, at the several dates, and for the several amounts as within stated?

3. Whether the said judgments were not due and payable before the death of the said Joseph Archer?

4. Whether the said James L. Mifflin was not utterly insolvent, and unable to pay and discharge his debts, before the death of the said Joseph Archer?

5. Whether the said James L. Mifflin was not actually discharged as an insolvent debtor, by virtue of the insolvent laws of Pennsylvania, before the death of the said Joseph Archer?

6. Whether the said James L. Mifflin has not been discharged as a bankrupt, under the act of Congress establishing a uniform system of bankruptcy throughout the United States?

7. Whether the said Eli K. Price and the said Charles Bispham did

not take out letters testamentary upon the estate of the said Joseph Archer, and officiate as the executors of the said Joseph Archer; and whether, and when, the said Charles Bispham was discharged from his said office?

8. What estate and effects passed by the said will and testament, and under the laws of the Commonwealth of Pennsylvania, into the possession of the said executors, and the value thereof?

9. Whether the said executors have not been selling and disposing of the said estate and effects, and thereby diminishing and wasting the assets in their hands, in derogation of the rights of the said United States?

10. Whether the said bonds and judgments, with the arrears of interest and costs as aforesaid, remain unpaid and unsatisfied to the United States?

And that an account may be taken, by and under the direction and decree of this honorable court, of what is due from the principal and interest and costs of the several judgments as aforesaid, and that an account may also be taken of the personal estate and effects of the said testator, possessed or come into the hands of the said Eli K. Price and Charles Bispham, executors as aforesaid, and of the said Eli K. Price, executor of the said Joseph Archer, since the discharge of the said Charles Bispham as aforesaid.

And that they shall be decreed to pay to the said United States what shall appear to be due and owing to them, for the principal and interest and costs of the said several judgments, out of the said testator's personal estate, in a due course of administration.

And in case the same shall be insufficient for the purpose, then out of the real estate, of which the said testator died seized, to make good any such deficiency; and that the right of the said United States to a preference in payment out of the said assets, estate, and effects, and the proceeds thereof, may be decreed and established; and that the said United States may have further relief in the premises, as the nature of the case shall require, and to this honorable court shall seem meet.

And the said plaintiff suggests unto your honors that, the premises considered, the court may grant a writ of subpœna, to be directed to the said Eli K. Price, executor of Joseph Archer, deceased, and the said Charles Bispham, if he shall come within the jurisdiction of this court, and their confederates when discovered, commanding them, and every of them, at a certain day, and under a certain pain therein to be limited, to be and appear before this honorable court, and then and there answer all and singular the premises, and to stand to and abide and perform such order, direction, and decree, as to this honorable court shall seem meet.

H. M. WATTS,
Attorney U. S. E. D. Pa.

August 29, 1843.

Note.—The defendants, Eli K. Price, executor of Joseph Archer, deceased, and Charles Bispham, if he shall come within the jurisdic-

tion of the court, are required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

H. M. WATTS,
Attorney of the U. S.

The answer of Eli K. Price, executor of the last will and testament of Joseph Archer, deceased, to the bill of complaint of the United States of America.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto.

For answer unto the first interrogatory in plaintiffs' bill, saith: That this defendant admits that the bonds stated and set forth in the said bill were executed and delivered by Joseph Archer in his lifetime, together with James L. Mifflin; and said bonds are of the character and description as stated in the said bill; and this defendant annexes copies of the said bonds, (marked A, 1 to 5,) which he prays may be taken as a part of this answer. And this defendant avers, that the said bonds were executed and delivered to the said plaintiffs, by the obligors, to secure the payment to the plaintiffs of the amounts specified in the respective conditions of said bonds, being the amount of certain duties imposed by the plaintiffs, according to law, on divers goods and merchandise imported and owned by the said James L. Mifflin into the United States from foreign countries, in which bonds the said James L. Mifflin was the principal debtor, and the said Joseph Archer was surety, according to the statute in such case made and provided.

And this defendant, further answering unto the second interrogatory in said plaintiffs' bill, saith: That he admits that judgments at law were obtained on the said bond jointly, against the said James L. Mifflin and Joseph Archer, at the several dates and for the amounts as stated in said bill.

And this defendant, further answering unto the third interrogatory in the said plaintiffs' bill, saith: That he admits that the said judgments were due and payable before the death of the said Joseph Archer, to wit, on the rendition thereof.

And this defendant, further answering unto the fourth interrogatory in the said plaintiffs' bill, saith: That he does not know, but has been informed and believes, that the said James L. Mifflin was utterly insolvent, and unable to pay and discharge his debts, before the death of the said Joseph Archer; but when he became so insolvent this defendant is unable to answer, either from information, knowledge, or belief.

And this defendant, further answering unto the fifth interrogatory in the said plaintiffs' bill, saith: That he has been informed and believes that the said James L. Mifflin was discharged as an insolvent debtor, by

virtue of the insolvent laws of Pennsylvania, before the death of the said Joseph Archer; but when he does not know.

And this defendant, further answering unto the sixth interrogatory in the said plaintiffs' bill, saith: That he does not know, but has been informed and believes, that the said James L. Mifflin was discharged as a bankrupt, under the act of Congress stated, since the death of the said Joseph Archer.

And this defendant, further answering unto the seventh interrogatory in the said plaintiffs' bill, saith: That he and Charles Bispham did take out letters testamentary to the estate of the said Joseph Archer, in the county of Philadelphia, and State of Pennsylvania; and this defendant and the said Charles Bispham did execute the office of executor of the last will and testament of the said Joseph Archer; and the said Charles Bispham was, on the prayer of his own petition in the orphan's court for the city and county of Philadelphia, on the 23d day of February, 1843, discharged from the office of executor aforesaid.

And this defendant, further answering unto the eighth interrogatory in the said plaintiffs' bill, saith: That the estate and effects which were of the said Joseph Archer, deceased, which passed under his last will and testament into the hands and possession of this defendant, were greater in amount than the aggregate of the several sums claimed in said plaintiffs' bill.

And this defendant, further answering unto the ninth interrogatory in the said plaintiffs' bill, saith: That the said executors and this defendant, since he has been sole executor, have sold and disposed of part of the estate which was of the said Joseph Archer, but did not thereby diminish and waste the assets in their hands, nor were such sales in derogation of rights of the plaintiffs; and this defendant further avers, that no part of the said estate has been lost or wasted to his knowledge and belief. And the attorney of the plaintiffs well know, that ample funds have been set aside agreeably to law to meet all claims of the plaintiffs against the estate of the said Joseph Archer, should such claims be established.

And this defendant, further answering unto the tenth interrogatory in the said plaintiffs' bill, saith: That he does not know, nor can he say, whether the bonds and judgments aforesaid, with the arrearages of interest and costs, remain unpaid to the plaintiffs; in point of fact he avers, that a partial payment was made to plaintiffs on the bond conditioned for the payment of six hundred dollars in plaintiffs' bill stated, of the sum of two hundred and forty-two dollars on the sixteenth day of March, 1833; and whether the said bonds and judgments are unsatisfied to or by the said plaintiffs, or by operation of law, this defendant cannot answer, but submits himself, upon the facts in this his answer stated and set forth, to the adjudication of this honorable court.

And this defendant further answering averreth and saith: That the said Joseph Archer died on the 28th day of September, 1841, and the said James L. Mifflin survived him, and is still surviving.

And this defendant further answering averreth and saith: That the

plaintiffs, upon the several judgments in plaintiffs' bill stated, have not, since the rendition thereof, issued or proceeded to execution against the said James L. Mifflin; and this defendant submits, that after so great delay and laches in respect of the same, the plaintiffs can have no remedy against him, this defendant, as executor of the said Joseph Archer, deceased, by reason of any thing set forth in the said plaintiffs' bill, and if any remedy they have, it is at law upon the said judgments.

And this defendant submits to this honorable court, that all and every the matter in the said plaintiffs' bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said plaintiffs are not entitled to any relief from a court of equity; and this defendant prays that he may have the same benefit of this defence as if he had demurred to the said plaintiffs' bill.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter or thing in the said plaintiffs' bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

W. M. MEREDITH,
JNO. MILES,
Of counsel for def't.

Eli K. Price, the above defendant, being duly affirmed, doth depose and say, that the facts set forth in the above answer are true, and so far as they are stated from the information of others he believes them to be true.

ELI K. PRICE.

Affirmed and subscribed before me, this 4th day of October, A. D. 1843, in open district court, U. S.

FRA. HOPKINSGN,
Clerk district court.

No. 2737.

Know all men by these presents, that we, J. L. Mifflin [and] J. Archer, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this 7th day of May, in the year of Lord one thousand eight hundred and twenty-eight.

A, No. 1.

The condition of this obligation is such, that if the above bounden J. L. Mifflin and J. Archer, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the 7th day of May, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the time being, the sum of one thousand four hundred and eighty dollars, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise entered by the above bounden J. L. Mifflin, as imported in the ship Nassau from Canton, as per entry dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$1480.

JAMES L. MIFFLIN, [SEAL.]
JOSEPH ARCHER. [SEAL.]

Sealed and delivered in the presence of—
D. GIBSON.

No. 3564.

Know all men by these presents, that we, James L. Mifflin and Joseph Archer, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this 26th day of May, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 2.

The condition of this obligation is such, that if the above bounden J. L. Mifflin and Joseph Archer, or either of them, or either of their heirs, executors or administrators, shall or do, on or before the 26th day of May, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the time being, the sum of six hundred dollars, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden J. L. Mifflin as imported in the ship Nassau from Canton, as per entry dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$600.

JAMES L. MIFFLIN, [SEAL.]
JOSEPH ARCHER. [SEAL.]

Sealed and delivered in the presence of—
D. GIBSON.

No. 3604.

Know all men by these presents, that we, James L. Mifflin and Joseph Archer, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by the presents. Sealed with our seals, dated this 3d day of May, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 3.

The condition of this obligation is such, that if the above bounden James L. Mifflin and Joseph Archer, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the 3d day of May, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the time being, the sum of five thousand one hundred and ninety-four dollars eighty cents, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden James L. Mifflin, as imported in the ship Nassau from Canton, as per entry dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$5,194 80. JAMES L. MIFFLIN, [SEAL.]
JOSEPH ARCHER. [SEAL.]

Sealed and delivered in the presence of—
D. GIBSON.

No. 4419.

Know all men by these presents, that we, James L. Mifflin and Joseph Archer, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this 30th day of June, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 4.

The condition of this obligation is such, that if the above bounden J. L. Mifflin and J. Archer, or either of them, or either of their heirs, executors, or administrators, [shall] and do, on or before the 30th day of June, 1829, well and truly pay, or cause to be paid, unto the collector of customs for the district of Pennsylvania for the time being, the sum of five hundred and twenty-eight dollars ten cents, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden J. L. Mifflin as im-

ported in the ship Nassau from Canton, as per entry dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$528 10. JAMES L. MIFFLIN, [SEAL.]
JOSEPH ARCHER, [SEAL.]

Sealed and delivered in presence of—
D. GIBSON.

No. 4606.

Know all men by these presents, that we, J. L. Mifflin and J. Archer, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this eighth day of July, in the year of our Lord one thousand eight hundred and twenty-eight.

A, No. 5.

The condition of this obligation is such, that if the above bounden J. L. Mifflin and Joseph Archer, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the 8th day of July, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the time being, the sum of thirty-seven hundred and sixty-seven dollars fifty cents, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise entered by the above bounden J. L. Mifflin as imported in the ship Nassau from Canton, as per entry dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$3,767 50. JAMES L. MIFFLIN, [SEAL.]
JOSEPH ARCHER. [SEAL.]

Sealed and delivered in presence of—

The replication of Henry M. Watts, attorney of the United States for the district aforesaid, to the answer of Eli K. Price, executor as aforesaid, defendant.

This repliant, saving and reserving unto the United States all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for the replication thereto saith, that he will aver and prove the said bill to be true and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant will be ready to aver and prove as this honorable court shall direct, and humbly

prays as in and by the said bill he, on behalf of the United States, hath already prayed.

H. M. WATTS,
Attorney of the U. S., E. D. Pa.

Afterwards, to wit, on the twenty-third day of October, A. D. 1846, it is agreed that the replication to defendant's answer, filed by the complainants, be withdrawn, and that this case be set down for hearing upon bill and answer, and the exhibits attached thereto.

T. M. PETTIT, *for U. S.*
JNO. MILES,
MEREDITH,
Solicitors for respondent.

Afterwards, to wit, on the twenty-seventh day of October, A. D. 1846, this case came on to be heard upon the bill, answer, and the exhibits attached to the answer filed, and the counsel for the complainants and respondents were fully heard.

Thereupon, it is ordered and decreed that the complainants' bill be dismissed, and that the defendant is dismissed.

Whereupon, afterwards, to wit, on the twenty-eighth day of January, A. D. 1847, the complainants aforesaid, by their attorney aforesaid, pray leave to appeal from the decree of the said court to the Supreme Court of the United States, and the same is allowed.

UNITED STATES, *Eastern district of Pennsylvania.*

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit in equity therein lately depending between the United States of America, complainants, and Eli K. Price, executor, &c., and others, defendants.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, at Philadelphia, this twenty-
[L. S.] ninth day of March, A. D. 1847, and in the seventy-first year of the independence of the said United States.

GEORGE PLITT,
Clerk of circuit court.

Filed 7th April, 1847.

Exhibit No. V.

In the D. C. U. S., eastern district of Pennsylvania.

Docket entries and returns to writs.

No. 1.

THE UNITED STATES OF AMERICA } 1.
vs.
JAMES L. MIFFLIN.

February sessions, 1829, No. 74. Capias debt $100,000; debt

$2,297, due 12th February, 1829; exit 13th February, 1829. Appearance accepted.

February 14, 1829.—Narr. and judgment for the U. S. Ca. sa. to May sessions, 1829, (not returned.) Sci. fa. to Feb., 1834, No. 32.

SAME
vs.
JOSEPH ARCHER. } 2.

February sessions, 1829, No. 75. (Same entries as in No. 74, except no ca. sa.) Sci. fa. to February sess., 1834, No. 33.

SAME
vs.
WILLIAM FOSTER. } 3.

February sessions, 1829, No. 76. (Same entries as in No. 74, except no ca. sa.)

May 6, 1833.—Judgment satisfied as to William Foster, by virtue of a release granted by the Secretary of [the] Treasury, under the provisions of the acts for the relief of certain insolvent debtors of the United States, in consideration of the performance, by the said William Foster, of all the conditions made necessary by the said release as part of the terms on which it was granted; provided that this judgment is to remain unimpaired as to the other defendants, according to the provisions of the said acts, and proceedings preliminary to said release.

SAME
vs.
JOSEPH ARCHER. } 4.

February sessions, 1834, No. 33. Sci. fa. to revive judgment; ex. 20th January, 1834. Original. February, 1829, No. 75.

Service accepted by

SAMUEL ARCHER.

February 25, 1834.—Judgment for the United States.

October , 1842.—Motion on behalf of the executors of Joseph Archer, to set aside this judgment, &c.

January 28, 1843.—Return set aside, and judgment vacated.

No. 2.

THE UNITED STATES OF AMERICA
vs.
JAMES L. MIFFLIN, William Foster, and Joseph Archer. } 1.

May sessions, 1829, No. 348. Summons debt $100,000; exit May 1, 1829.

May 18, 1829.—Summons returned "served." Judgment for U.

S., June 16, 1829. Narr. filed, and fi. fa. to August, 1829, No. 3, (not returned.)

Real debt, $4,188 62.

May 6, 1833.—Judgment satisfied as to William Foster, by virtue of a release from the Secretary of the Treasury, under the provisions of the acts for the relief of insolvent debtors of the United States, and in consideration of the performances, by the said William Foster, of all the conditions made necessary by the said release, as a part of the terms on which it was granted; provided that judgment remain unimpaired as to the other defendants, &c.

SAME
vs.
JAMES L. MIFFLIN & Joseph Archer. } 2.

May sessions, 1834, No. 180. Sci. fa. to revive judgment; (original, May, '29, 348;) exit 27th March, 1834.

I accept service for the above named defendants, in this case and in Nos. 181 and 182, April 1, 1834.

SAMUEL ARCHER.

I accept service.

JAMES L. MIFFLIN.

Made known.

B. S. BONSALL, *Marshal.*

May 19, 1834.—Judgment for the United States.

October 9, 1841.—Affidavit of Joseph Archer filed, and motion on behalf of E. K. Price and Charles Bispham, for a rule to show cause why this judgment should not be set aside or opened, and they let into a defence.

January 28, 1843.—Return set aside, and judgment vacated.

SAME
vs.
JAMES L. MIFFLIN & Joseph Archer. } 3.

November sessions, 1838, No. 38. Alias sci. fa. to revive judgment; (original, May, 1829, No. 348;) ex. 14, Nov. 14, 1838.

I accept service for myself and Joseph Archer.

JAMES L. MIFFLIN.

Made known.

S. D. PATTERSON, *Marshal.*

November 23, 1838.—Judgment for United States.

October 9, 1841.—Affidavit of Jos. Archer filed, and motion to set aside the judgment; the same as in May, 1834, No. 180.

January 28, 1843.—Return set aside, and judgment vacated.

936.

No. 3.

SAME
vs.
JAMES L. MIFFLIN & Joseph Archer. } 1.

May sessions, 1829, No. 359. Capias debt $100,000. No bail required; exit May 12, 1829.

May 18, 1829.—C. C., and appearance accepted. No appearance given on the writ, or entered on the docket.

Judgment for United States.

SAME
vs.
JAMES L. MIFFLIN & Joseph Archer. } 2.

May sessions, 1834, No. 181. Sci. fa. to revive judgment; (original, May, 1829, 359;) ex. March 27, 1834.

(Service accepted by Samuel Archer, as in May, 1834, see page .)

I accept service.

JAMES L. MIFFLIN.

Made known.

B. S. BONSALL, *Marshal.*

May 19, 1834.—Judgment for United States.

October 1, 1842.—Motion on behalf of Eli K. Price et al., executors of Joseph Archer, to set aside this judgment, &c.

January 28, 1843.—Return set aside, and judgment vacated.

SAME
vs.
JAMES L. MIFFLIN & Joseph Archer. } 3.

November sessions, 1838, No. 39. Al. sci. fa. to revive judgment; (original, May, 1829, 359;) exit, 14th November, 1838.

I accept service for myself and Joseph Archer.

JAMES L. MIFFLIN.

Made known.

S. D. PATTERSON, *Marshal.*

November 23, 1838.—Judgment for the United States.

October 9, 1841.—Affidavit of Joseph Archer filed.

" 1842.—Affidavit of J. L. Mifflin filed, and motion on behalf of E. K. Price, &c., executors of Joseph Archer, to set aside this judgment, &c.

January 28, 1843.—Return set aside, and judgment vacated.

No. 4.

SAME
vs.
JAMES L. MIFFLIN, William Foster, and Joseph Archer. } 1.

May sessions, 1829, No. 360. Capias debt $100,000; no bailing; ex. May 12, 1829.

C. C., and appearance accepted. (No appearance given on writ, or entered on docket.)

June 16, 1829.—Narr. filed; judgment for United States. Fi. fa. to August, 1829, No. 4; real debt, $1,955; not returned.

May 6, 1833.—Judgment satisfied as to William Foster, by virtue of a release granted by the Secretary of the Treasury, under the provisions of the acts for the relief of certain insolvent debtors, &c.; (same as May, '29, 348.)

SAME
vs.
JAMES L. MIFFLIN and JOS. ARCHER. } 2.

May sessions, 1834. No. 182. Sci. fa. to revive judgment, (orig. May, 1829, 360.) Exit 21 March. Service accepted by Samuel Archer, as in May, 1834, 180. See page .

I accept service. J. L. MIFFLIN.
Made known. B. L. BONSALL, *Marshal.*

May 19, 1834.—Judgment for United States.

Oct. , 1842.—Affidavit of J. L. Mifflin filed, and motion on behalf of Eli K. Price et al., executors, to set aside the judgment, &c.

January 28, 1843.—Return set aside and judgment vacated.

SAME
vs.
JAMES L. MIFFLIN and JOSEPH ARCHER. } 3.

November sessions, 1838. No. 40.—Alias sci. fa. to revive judgment, (orig. May, 1829, No. 360.) Exit 14 November, 1838.

I accept service for myself and Joseph Archer.

JAMES L. MIFFLIN,

Made known.

S. D. PATTERSON, *Marshal.*

October 23, 1838.—Judgment for the United States.

October, 1841, October, 1842.—Affidavits of Joseph Archer and James L. Mifflin filed, and motion on behalf of E. K. Price et al., executors of Joseph Archer, to set aside this judgment, &c.

January , 1843.—Return set aside and judgment vacated.

No. 5.

SAME
vs.
JAMES L. MIFFLIN and JOSEPH ARCHER. } 1.

August sessions, 1829. No. 34.—Summons debt $100,000; ex. 30 May, 1829.

August 25, 1829.—"Served." Judgment for United States.

SAME
vs.
JAMES L. MIFFLIN and JOSEPH ARCHER. } 2.

August sessions, 1834. No. 73.—Sci. fa. to revive judgment, (orig. August, '29; 74.) Exit 4 August, 1834.

I accept service for the defendants.

JAMES L. MIFFLIN.

Made known to answers.

B. S. BONSALL, *Marshal.*

August 18, 1834.—Judgment for the United States.

October , 1842.—Affidavit of J. S. Mifflin filed, and Jos. Archer, and motion on behalf of executors of Jos. Archer, deceased, to set aside this judgment, &c.

January , 1843.—Return set aside and judgment vacated.

SAME
vs.
JAMES L. MIFFLIN and JOSEPH ARCHER. } 3.

To November sessions, 1838. No. 41.—Al. sci. fa. to revive judgment, (original August, 1829, No. 34.) Exit 14 November, 1838.

I accept service for myself and Joseph Archer.

JAMES L. MIFFLIN.

Made known. S. D. PATTERSON, *Marshal.*

November 23, 1838.—Judgment for the United States.

October , 1842.—Affidavit of J. L. Mifflin filed, and motion on behalf of E. K. Price et al., executors of J. Archer, deceased, to set aside this judgment, &c.

January 28, 1843.—Return set aside and judgment vacated.

No. 6.

SAME
vs.
JAMES L. MIFFLIN and JOSEPH ARCHER. } 1.

To August sessions, 1829. No. 36.—Summons debt $100,000. Exit June 6, 1829, August 25, 1829. "Served."

On motion, judgment for the United States.

SAME
vs.
JAMES L. MIFFLIN and Joseph Archer. } 2.

To August sessions, 1834. No. 74. Sci. fa. to revive judgment, (original, August 29. No. 36.) Ex. 4th August, 1834.

I accept service for the defendants.

JAMES L. MIFFLIN.

Made known, B. S. BONSALL, *Marshal.*

August 18, 1834. Judgment for the United States.
October 1842. Affidavit of J. L. Mifflin filed, and that of Joseph Archer; and motion on behalf of Eli K. Price et al., executors of Joseph Archer, deceased, to set aside this judgment, &c., &c.
January 28, 1843. Return set aside and judgment vacated.

SAME
vs. } 3.
JAMES L. MIFFLIN and Joseph Archer.

To November sessions, 1838. No. 42. Alias sci. fa. to revive judgment, (original, August 29. No. 36.) Exit 14th November, 1838.
I accept service for myself and Joseph Archer.

JAMES L. MIFFLIN.

Made known.

S. D. PATTERSON, *Marshal.*

November 23, 1839. Judgment for the United States.
October , 1842. Affidavit of Joseph Archer and James L. Mifflin filed; and motion on behalf of Eli K. Price et al., executors of Joseph Archer, deceased, to set aside this judgment, &c.
January 28, 1843. Return set aside and judgment vacated.

No. 7.

SAME
vs. } 1.
JAMES L. MIFFLIN and Joseph Archer.

To August sessions, 1829. No. 87. Summons debt $50,000. Ex. July 3, 1829. Served August 25, 1829.
Judgment for the United States.

SAME
vs. } 2.
JAMES L. MIFFLIN and Joseph Archer.

August sessions, 1834. No. 76. Sci. fa. to revive judgment, (original, August 29.) [No.] 87. Ex. August 4, 1834.
August 18, 1834. Made known, i. e., I accept service for defendants.

JAMES L. MIFFLIN.

October, 1842. Motion to set aside this judgment, (on affidavits of Joseph Archer and James L. Mitchell filed,) on behalf of E. K. Price et al., executors of Joseph Archer, deceased, &c., &c.
January 28, 1843. Return set aside and judgment vacated.

SAME
vs. } 3.
JAMES L. MIFFLIN and Joseph Archer.

November sessions, 1838. No. 44. Al. sci. fa. to revive judgment, (original, August 29. No. 87.) Exit November 14, 1838.

I accept service for myself and Joseph Archer.

JAMES L. MIFFLIN.

Made known.

S. D. PATTERSON, *Marshal.*

November 23, 1838. Judgment for United States.

October , 1842. Affidavits of Joseph Archer and James L. Mifflin filed; and motion on behalf of Eli K. Price and C. Bispham, executors of Joseph Archer, deceased, to set aside this judgment, &c.

January 28, 1843. Return set aside and judgment vacated.

No. 8.

SAME
vs. } 1.
JAMES L. MIFFLIN and Joseph Archer.

To August sessions, 1829. No. 96. Summons debt $100,000. Ex. 14th July, 1829.

August 25, 1829. Served.

Judgment for the United States.

SAME
vs. } 2.
JAMES L. MIFFLIN and Joseph Archer.

To August sessions, 1834. No. 75. Sci. fa. to revive judgment, (orig. August, 1829. No. 96.) Ex. 4 August, 1834.

I accept service for defendants.

JAS. L. MIFFLIN.

Made known.

B. S. BONSALL, *Marshal.*

August 18, 1834.—Judgment for the United States.

October, 1842.—Affidavit of Jos. Archer and James L. Mifflin filed, and motion to set aside the judgment, on behalf of the executors of Joseph Archer, deceased, to wit, Eli K. Price and Charles Bispham, &c., &c., &c.

January 28, 1843.—Return set aside and judgment vacated.

SAME
vs. } 3.
JAMES L. MIFFLIN and Joseph Archer.

To November sessions, 1838. No. 43. Al. sci. fa. to revive judgment, (orig. 1829. No. 96.) Exit Nov. 14, 1838.

I accept service for myself and Joseph Archer.

JAMES L. MIFFLIN.

Made known.

S. D. PATTERSON, *M.*

November 23, 1838.—Judgment for the United States.

October, 1842.—Affidavit of Joseph Archer and James L. Mifflin filed, and motion to set aside this judgment, on behalf of E. K. Price and Ch. Bispham, executors of Joseph Archer, deceased, &c., &c.

January 28, 1843.—Return set aside and judgment vacated.

No. 9.

SAME
vs.
JAMES L. MIFFLIN, Joseph Archer, and William Foster. } 1.

To November sessions, 1829. No. 19. Summons debt $100,000. Ex. Oct. 14, 1829. November 16, 1829, "served." Eod. die, judgment for the United States.

May 6, 1833.—Judgment satisfied by virtue of a release granted by the Secretary of the Treasury, under the provisions of the acts for the relief of certain insolvent debtors of the United States, &c., &c. (See May, 1829, 348, page 2.)

SAME
vs.
JAMES L. MIFFLIN and Joseph Archer. } 2.

November sessions, 1834. No. 14. Sci. fa. to revive judgment, (orig. November, 1829.) Exit October 6, 1834.

Return. Service accepted for Joseph Archer by Saml. Archer, made known to Mifflin.

November 17, 1834.—Judgment for the United States.

1841. October 9.—Affidavit of Joseph Archer filed, and motion on behalf of E. K. Price and Ch. Bispham, executors of Jos. Archer, to set aside this judgment, &c., &c.

January 28, 1843.—Return set aside and judgment vacated.

District court, United States, February sessions, 1843.

UNITED STATES OF AMERICA
vs.
E. K. PRICE and Charles Bispham, executors of Joseph Archer, deceased. } 8.

Summons debt $50,000. C. H. B. No. 4,606. Dated 8 July, 1828. Real debt, 8 July, 1829, $3,767 50. Exit 6 February, 1843.

1843. February 20.—Returned. Served on E. K. Price; N. E. J. as to Bispham, on motion of district attorney. Rule on defendant Price, to show cause why judgment should not be entered in favor of the U. S. A. Returnable on Saturday next.

March 4th.—Rule discharged.

April 20th.—Warrant filed.

May 23.—Defendant pleads non est factum. Nil debit, former recovery, and judgment, and the death of Joseph Archer, after execution of the bond and before suit, and payment. Replication, and issues, and rule for trial by special jury.

1843, May 23.—And now a jury being called, come, to wit, Francis Cooper, James Carstairs, David B. Morgan, Emerson McIlvaine, Allen E. Brooks, James Kelly, Joseph Ellis, Benjamin Whitecar, Benjn. M. Hinchman, Geo. Bastian, James M. Newman, and Henry Taylor, who are respectively sworn or affirmed, &c. And now the jurors aforesaid, on their oaths and affirmations aforesaid, respectively do say, (for special verdict see file.)

July 14.—Judgment for defendant on the special verdict.

Aug. 26.—Writ of error.

SAME vs. SAME. } 9.

Summons debt $50,000, C. H. B. No. 2737, dated 7th May, 1828. Real debt, 7th May, 1829, $1,480. Exit 6th February, 1843.

1843, Feb. 20.—Retd. served on E. K. Price, N. E. J., as to Bispham.

Feb. 20.—Same motion and rule as in No. 8.

Mar. 4.—Rule discharged.

April 20.—Narr. filed.

SAME vs. SAME. } 10.

Summons debt $50,000, C. H. B. No 3604, dated 31st May, 1828. Real debt 31st May, 1829, $5,194$\frac{86}{100}$. Exit 6th February, 1843.

1843, Feb. 20.—Retd. served on E. K. Price, N. E. J., as to Bispham.

Same motion and rule as in No. 8.

Mar. 4.—Rule discharged.

April 20.—Narr. filed.

SAME vs. SAME. } 11.

Summons debt $50,000, C. H. B. No. 2217, dated 28th April, 1828. Real debt 28th April, 1829, $4,188$\frac{62}{100}$. Exit 6th February, 1843.

1843, Feb. 20.—Retd. served on E. K. Price, N. E. J., as to Bispham.

Feb. 20.—Same motion and rule as in No. 8.

March 4.—Rule discharged.

April 20.—Narr. filed.

SAME
vs. } 12.
SAME.

Summons debt $50,000, C. H. B. No. 1767, dated 12th April, 1828. Real debt 12th October, 1829, $2,297. Exit 6th February, 1843.

(Same as in No. 11.)

SAME
vs. } 13.
SAME.

Summons debt $50,000, C. H. B. No. 3564, dated 26th May, 1828. Real debt 26th May, 1829, $600. Exit 6th February, 1843.

(Same as in No. 11.)

SAME
vs. } 14.
SAME.

Summons debt $50,000, C. H. B. No. 2329, dated 1st May, 1828. Real debt 1st May, 1829, $1,955. Exit 6th February, 1843.

(Same as in No. 11.)

SAME
vs. } 15.
SAME.

Summons debt $50,000, C. H. B. No. 4419, dated 30th June, 1828. Real debt 30th June, 1829, $528 $\frac{10}{100}$. Exit February 6, 1843.

"Same as in No. 11."

SAME
vs. } 16.
SAME

Sci. fa. Post ann. et drim. to revive judgment. Original, No. 75. February, 1829. Exit 6th February, 1843. Real debt $2,297, due 12th February, 1829.

1843, February 20.—Made known to E. K. Price, N. E. J., as to Bispham.

1843, February 20.—Same motion and rule as in No. 8.

1843, March 4.—Rule discharged.

1843, May 23.—And now, a jury being called, to wit, Martin Murphy, Eleazer Shinn, John Hall, Thos. B. Russum, B. Graves, John Sidney Jones, John H. Gartley, Henry S. Farr, Edward McGovern, John B. Stryker, John H. Curtis, and Jos. Caskey, who, on their oaths or affirmations respectively, do say that they find for the United States the sum of three thousand eight hundred and twenty-nine dollars and 37 cents debt (3,829 37) and $\frac{8}{100}$ costs, subject to any deduc-

tion which the court may hereafter make, and subject also to the opinion of the court on the facts given in evidence.

1845, January 4.—On motion of Mr. Watts, rule to show cause why judgment should not be entered on the verdict for the United States. Returnable on Saturday, the 11th instant.

1845, January 13.—By order of district attorney filed, credit is given on the record to the defendants for three thousand dollars on this judgment, being on bond No. 1766, that amount having been paid to the collector on the 25th September, 1843.

1850, May 7.—Costs paid. Satisfied.

JOHN W. ASHMEAD,
For plaintiff.

In the circuit court of the United States, E. D. of Pennsylvania, October sessions, 1843. No. 12.

THE UNITED STATES OF AMERICA
vs.
ELI K. PRICE, executor of Joseph Archer, deceased.

Writ of error to district court of the United States, (D. C., February, 1843. No. 8.) Issued, and security given, August, 1843.

1843, October 11. Record returned.

Exhibit No. VI.

Supreme Court of the United States, Nos. 66 and 67.

December term, 1849.

THE UNITED STATES, appellants,
vs.
ELI K. PRICE, executor of Joseph Archer, deceased.

On appeal from the circuit court of the United States, for the eastern district of Pennsylvania.

Mr. Justice Grier delivered the opinion of the court.

As the decision of one of the points raised in these cases will rule them both, it will be unnecessary to notice the others.

The complainant seeks a remedy in equity against the assets of a deceased surety, in certain bonds given for duties. The bonds were joint and several, but a joint judgment had been recovered on them against all the obligors. The principal in the bond survives, but is insolvent.

The question for our consideration will therefore be, whether a court of equity will interfere to give a remedy against the personal assets of

a deceased surety, when the remedy at law has been lost by the election of the obligee to take a joint judgment on a joint and several obligation.

The obligation of suretyship arises only from positive contract. This contract is construed strictly both at law and equity, and the liability of the surety cannot be extended by implication beyond the terms of his contract. If he contracts jointly with his principal, it is a legal consequence known to all the parties, that his personal estate will be discharged in case he should die before his principal. Such being the law, it may be considered as a part of the written condition of the bond. And equity will not interfere to extend the liability, as against his estate, on the ground that such discharge arises from the mere technicalities of the law.

So where a surety enters into a joint and several obligation with his principal, the obligee and all the parties are supposed to be aware of the doctrines of law connected with such securities, and to incorporate them therein as part of the contract. The obligee knows that this bond will entitle him to either a joint or several judgment, at his election; he knows also that he cannot have both, that his bond is extinguished by his judgment, or merged in it, as a security of a higher nature, and he knows that if he elects to take a joint judgment, and neglects to have execution levied in the lifetime of the surety, that his personal estate will be discharged at law.

Assuming, as we have a right to do, that these known and established principles of law form a part of the written conditions of the bond, it is not easy to perceive how a chancellor could interpose in the latter case more than in the former, without disregarding the terms of the contract, and extending the liability of the surety beyond the letter and spirit of his bond.

It is true that in cases of fraud, accident, or mistake, equity will relieve as well against the surety as the principal. Thus in case of a lost bond, equity will set it up against a surety, or where a bond has been made joint, instead of joint and several, by mistake of a scrivener; but it will require a very clear and strong case, where a surety is concerned, (3 Russel, 539.) On the contrary, where the parties are joint debtors, and there is no surety in the case, equity will reform the bond, on the mistake presumed, from the fact that both are bound in conscience to pay, and therefore intended to bind themselves severally.

In the present case we have no allegation of fraud, accident, or mistake. The bill assumes that the legal liability of the surety is gone by coming into equity for relief, and it shows affirmatively, that the loss of legal recourse to the assets of the surety has resulted from the voluntary election of the obligee to extinguish the several remedy on his bond, without any allegation of mistake or surprise.

"If the obligee of a joint bond, by two or more, agree with one obligor to release him, and do so, and all the obligors are thereby discharged at law, equity will not afford relief against the legal consequences, although the release was given under a manifest misrepresentation of

the legal effect of it in relation to the other obligors." (Hunt vs. Rousmanier's adm'r, 1 Peters, 1.)

If equity would not interfere in such a case to revive the legal obligation, even as against the principal debtor thus unwittingly released, it is difficult to perceive on what principle it should interpose to revive an extinguished remedy against a surety who is not bound beyond his legal liability, and who has been discharged therefrom, by the voluntary act of the obligee, without any allegation of surprise or misapprehension of the law.

That equity will not hold a surety liable, where he is discharged at law, seems to be well settled both in England and in this country, as a reference to a few of the decisions on this subject will fully show. In Wright vs. Russell, (3 Wilson, 530,) it is said, "that courts of equity are favorable to sureties, and where they are not strictly bound at law, equity will not bind them." And in Simpson vs. Field, (2 Cha. Ca. 22,) it was held, "that where a surety is not bound at law, he will not be made liable in equity." In the case of Waters vs. Reilly, (2 Harris & Gill, 310,) the court of appeals of Maryland say, "a surety is bound only by the bond itself, and is not under a moral obligation to pay; equity will not therefore interfere to charge him beyond his legal liability." The same doctrine is established by the court of appeals of Virginia, in Harrison vs. Fields, Ex. (2 Washington, 136,) and by the supreme court of Pennsylvania, in Weaver vs. Shryrock, (6 S. & R. 206,) and Kennedy vs. Carpenter, (2 Wharton, 361.)

The only case which asserts a contrary doctrine is that of United States vs. Cushman, (2 Sumner, 426.)

Although as a circuit decision, it is not binding, in its authority upon this court, yet proceeding from so eminent a judge, it is entitled to high respect. The case is precisely parallel with the present in all its circumstances, and the positions there assumed have been urged upon the court in this case, as sufficient to entitle the appellant to a decree in his favor. The opinion of the court in that case, and the argument of the learned counsel for appellant in this, are based on the two following propositions—to neither of which is this court prepared to give its assent:

1st. "That when a party enters into a joint and several obligation, he in effect agrees that he will be liable to a joint and a several action for the debt; and if so, then, a joint judgment can be no bar to a several suit: that by electing a joint suit, the obligee does not waive his right to maintain a several suit; and that a joint judgment is not per se a satisfaction of a joint and several contract."

2d. "That even if the joint judgment could be treated at law as a merger of the several obligations, so far from that constituting a ground in equity to refuse relief against the assets of the deceased party, it furnishes a clear ground for its interference; for it is against conscience, that a party who has severally agreed to pay the whole debt, should be the mere accident of his own debt, deprive the creditor of all remedy against his assets."

1st. The first of these propositions proves too much for the case ; for if the surety is still liable at law, the complainant has made no case for relief in equity. But the cases cited in support of it, viz., Higgins' case, (6 Coke, 44,) and Lechmere vs. Fletcher, (1 Crompton & Meeson, 623,) will not sustain the doctrine stated in this proposition. They establish this position and nothing more, viz.: "That in case of a joint bond, a judgment against one joint contractor would be a bar to an action against another; but if two are bound jointly and severally and the obligee has judgment against one of them, he may yet sue the other." The case of Sheely vs. Mandeville, (6 Cranch, 253,) in this court, although sometimes criticised and doubted in other courts, goes no farther than to decide, that where one partner is sued severally on a joint or partnership contract and judgment obtained against him, it is no bar to a suit against the other, because this contract was not merged in the judgment, and because the first judgment was founded on a several, not a joint promise.

But these cases give no countenance to the assertion, "that a joint judgment is not per se a satisfaction of a joint and several bond." The law on this subject is too well settled to admit of a doubt, or require the citation of authorities—that if two or more are bound jointly and severally, the obligee may elect to sue them jointly or severally. But having once made his election and obtained a joint judgment, his bond is merged in the judgment quia transit in rem judicatam. It is essential to the idea of election that a party cannot have both—one judgment against all or each of the obligors is a satisfaction and extinguishment of the bond. It no longer exists as a security, being superseded, merged, and extinguished in the judgment, which is a security of a higher nature. The creditor has no longer a remedy, either at law or in equity, on his bond, but only on his judgment. The obligor is no longer bound by the bond but by the judgment; it has become the evidence of his indebtedness and the measure of his liability.

2d. The second proposition repudiates the doctrine of courts of equity, that where a surety is not bound at law, he will not be made liable in equity. It does not controvert the well settled principle that where the bond is joint only, the personal assets of the surety will be discharged by his death, but asserts that his conscience is affected because his bond was originally both joint and several. But if it is not against conscience that the estate of a surety should be released by his death, when his undertaking was originally joint only, it is hard to apprehend how it becomes so, when the obligee having a choice of both securities elects to hold the surety bound jointly and not severally.

If a surety is under no moral obligation to pay, where he is not legally bound by his contract, his conscience cannot be reached, when the law discharges him from his legal obligation. The law, as we have before stated, makes a part of every contract ; and in case of a joint and several bond, the contract of the parties is, that the estate of the surety shall be discharged by his death, if the obligee elect to hold him jointly and not severally liable. So that, in the present case, it

is the obligee who is acting against conscience, because he seeks to hold the surety liable contrary to their contract.

"No case can be found in the books, says a learned author, (Pitman on Principal and Surety, page 92, says note,) where equity has varied the legal effect of the instrument so as to charge the surety." To give a remedy against the estate of a surety after it is discharged at law, and by the election of the obligee, would be varying the legal effect of his contract in a most material point.

The cases cited in support of the second proposition will be found on examination to have no bearing on the point now under consideration. They are too numerous to be severally noticed. They may all be found collected in 1 Story Equity, § 162, in note commencing with Simpson vs. Vaughan, (1 Atk., 31,) and ending with Thorpe vs. Jackson, (2 Young and Collier, 262,) and Gray vs. Chesnut, (1 Mylne and Keen, 582.) They chiefly refer to cases of partnership and other joint debtors whose liability at law is joint only, but equity administers relief as against the estate of the deceased partner or joint debtor on account of the moral obligation of each to pay the debt, and because they have received a benefit from the transaction. The doctrine of these cases is clearly stated by Sir William Grant, in the case of Sumner vs. Powel, (2 Merivale, 35,) "where," says he, "the obligation exists only in virtue of the covenant, its extent can be measured only by the words in which it is conceived. A partnership debt has been treated in equity, as the several debt of each partner, though at law it is only the joint debt of all. But there all the partners have had a benefit from the money advanced or the credit given, and the obligation of all to pay exists independently of any instrument by which the debt may have been secured; so where a joint bond has been in equity considered as several, there has been a credit given to the different persons who have entered into the obligation. It is not the bond that first created the liability."

It is for this reason," says Mr. Justice Story, (Equity Jurisprudence, § 164,) "that equity will not reform a joint bond against a mere surety so as to make it several against him on the presumption of a mistake from the nature of the transaction."

When an obligee takes a joint and several bond he has nothing to ask of equity, his remedy is wholly at law. If he elects to take a joint judgment, he voluntarily repudiates the several contract, and is certainly in no better situation than if he had originally taken a joint security only; equity gives relief, not on bond, for that is complete at law, but on the moral obligation antecedent to the bond, when the creditor could have had no remedy at law.

An obligee who has a joint and several bond, and elects to treat it as joint, may sometimes act unwisely in so doing, but his want of prudence is no sufficient plea for the interposition of a chancellor. Nor can the conscience of a mere surety be affected, who having tendered

to the obligee his choice of holding him jointly or severally liable, has been released at law by the exercise of such election.

The decree of the circuit court is therefore affirmed.

I, William Thomas Carroll, clerk of the Supreme Court of the United States, do hereby certify, that the above and five preceding printed pages contain a true and perfect copy of the opinion of said Supreme Court in the above entitled cause, delivered at December term, A. D. 1849, as the same remains on the records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 30th day of Sep-
[L. S.] tember, in the year of our Lord one thousand eight hundred and fifty.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Order of court.

Afterwards, to wit, on the fourteenth day of April, A. D. 1851, on motion of complainants' said solicitor, the court order so much of the answer as prays the benefit of a demurrer to be stricken out.

Replication.

Afterwards, to wit, on the fifteenth day of April aforesaid, the said complainant, by his said solicitor, presents and files his replication in the words following, to wit:

The replication of Charles Bispham, complainant, to the answer of Eli K. Price, executor, &c.

This complainant, reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this complainant; without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

Agreement as to evidence.

Afterwards, to wit, on the twenty-ninth day of April aforesaid, an agreement as to evidence is presented and filed, which agreement is in the words and of the tenor following, to wit:

Circuit court, United States, E. D. Pa., in equity, April sessions, 1850.

CHARLES BISPHAM, a citizen of the State of New Jersey,
vs
ELI K. PRICE, a citizen of the State of Pennsylvania, and the executor of the last will and testament of Joseph Archer, deceased. } No. 105.

It is agreed that the exhibits annexed to the bill and answer, in the above entitled cause, shall be considered as evidence adduced by the respective parties, whose exhibits they are, and that they may be read on any hearing of the above entitled cause as if they were originals, duly proved, &c.

And it is further agreed that either party may read in evidence any letter addressed to him by the other, or the testator of the defendant, or by their respective counsel.

B. GERHARD, *for plaintiff*.
JNO. MILES, *for defendant*.

Philadelphia, April 29, 1851.

Opinion of the court.

Afterwards, to wit, on the tenth day of September, A. D. 1851, the opinion of the court is delivered by Judge Kane, which opinion is in the words and of the tenor following, to wit:

Joseph Archer and Charles Bispham, co-partners, made a settlement of accounts in 1835, in which credit was given to Mr. Archer for certain liabilities which he had personally contracted in behalf of the firm, jointly with third persons. He, however, died in 1841, without discharging them; and his death having released his estate, the present bill calls on his executor to reimburse to Mr. Bispham his proper share of the amount so credited to Mr. Archer in the partnership settlement.

To understand the merits of this claim, it is necessary to review the character and history of the settlement, and the circumstances that attended and followed it with some minuteness. The principles of law which are involved will need little discussion.

The partners had houses of trade at Canton and Valparaiso, as well as Philadelphia, and the business at each of them was conducted often in their individual names. They were both of them absent a great deal from the United States, and were rarely here together. In the course of the year 1834, the partnership, which had subsisted for many years, being about to expire, they executed the agreement which forms No. 2 of the exhibits annexed to the answer. It is in these words:

"*Exhibit No. 2.*

"From the long and repeated absence of Charles Bispham and Joseph Archer from the United States, it is believed the accounts of Archer & Bispham are in a state of some confusion, and in case of the

death of both or either of them, some difficulty might be experienced in the settlement. This is, therefore, to constitute and appoint William Foster, esq., our joint agent in the settlement of all accounts between Charles Bispham and Joseph Archer, their heirs, executors, or assigns, and the said Wm. Foster's decision shall be final and binding on all parties concerned.

("Signed,) Canton, April 29, 1834.

"J. ARCHER.

"Confirmed, November 15, 1834, Valparaiso.

"CHAS. BISPHAM."

Mr. Foster accepted the trust which was tendered to him by this agreement, and having investigated the matters referred to him, came to the conclusions which are set out in the respondent's exhibit, No. 3.

"*Exhibit No.* 3.

"Whereas I, William Foster, by virtue of the authority in the annexed agreement between Joseph Archer and Charles Bispham, lately trading under the firm of Archer & Bispham, contained, having examined the accounts of said firm, referred to me by the parties, do award and determine that Joseph Archer is indebted and should pay unto Charles Bispham, or his agent, the sum of fourteen thousand eight hundred and eight dollars $\frac{91}{100}$, in liquidation and full settlement between them of all matters, claims, and demands, relating to, or growing out of the transactions of this late firm, so far as they are now known, ascertained, or believed to exist; but as liabilities may hereafter be established or ascertained, or claims recovered, not now known to exist, growing out of transactions during the partnership, for partnership account, it is to be understood that the same are not embraced in the foregoing settlement and determination by me as the agent and umpire of the parties, and especially any matter of such character contingent on the result of pending suits, is expected from this adjustment of the affairs of said firm.

"Witness my hand this 18th day of November, 1835.

"WILLIAM FOSTER.

"Witness:

"J. T. RYERSON."

To this instrument was prefixed an account, framed by Mr. Foster, and forming the basis of his report or award. It includes a considerable number of large items, beginning with an apparent settlement under date of January, 1832, and closing on the 9th of November, 1835.

Of these items, it is not irrelevant to remark, that several of them appear to be, to some extent, hypothetical. Thus, "gains" are "estimated" on five different transactions, and are "supposed" to amount to $31,100; with which sum, however, Mr. Archer is charged abso-

lutely. And, on the other side, interest is computed against him on an ascertained profit of $71,220, only from a date "at which it is supposed the remittance will reach Canton."

There are some other items besides, which have an argumentative connexion with the present case. Mr. Bispham is allowed a credit of $10,693.19, as one half of the profits on a purchase and shipment of raw silk, made the very day before the partnership expired, by Mr. Archer, and which he did not consider as within the legitimate business of the firm, or involving any liability on the part of Mr. Bispham, if it had eventuated in loss. And, in the adjustment of the interest account between the partners, Mr. Archer is charged with compound interest at 12 per cent. on the moneys from time to time in his hands; while Mr. Bispham is charged, at the same rate, with simple interest only.

The last item, which it is necessary to refer to, connects itself more directly with the present case. In the course of the transactions of the firm, Mr. Archer, as its representative in the United States for the time being, availed himself of the responsibility of Mr. J. L. Mifflin as his surety on duty bonds at the custom-house, and in the same capacity, but in his personal name became reciprocally bound as surety for Mr. Mifflin. Mr. Mifflin having failed, there remained due to the Government divers bonds of his, on which Mr. Archer, thus acting for the firm of Archer and Bispham, was bound as surety. On some of these, amounting with interest to $15,670.14, Mr. Archer was the only surety; on others, amounting with interest to $12,191.46, Mr. Foster was surety with him. In the account framed by Mr. Foster as referee, Mr Bispham was charged with one half the amount of the Mifflin bonds, to which Mr. Archer alone was a party as surety, but with only one fourth of those which were executed by Mr. Foster also; the effect of this being to relieve Mr. Bispham from liability on account of this co-suretyship debt of $12,191.46, in consideration of a charge against him in the partnership settlement of $3,047.86; while Mr. Archer remained charged in the same settlement with the rest of that debt, amounting to $9,143.58, saving a right to recourse for $6,095.73 against Mr. Foster, the co-surety—a recourse, however, of no value in the result, because of Mr. Foster's insolvency.

The account, settlement, and report, made by Mr. Foster, the referee, were submitted to the two partners. Mr. Archer was then in Philadelphia, but about to sail for China via England; Mr. Bispham was at Valparaiso. On the day after the date of the award, Mr. Archer executed an instrument in these words, and transmitted it to Mr. Bispham:

"William Foster having agreed to and ratified the final settlement of all accounts between J. Archer and Charles Bispham, in relation to the late partnership of Archer & Bispham, this is to certify, that in case Charles Bispham, in his own name, objects to said settlement, William Foster is to be held entirely free from all blame and responsibility whatever; and I hereby bind myself, my heirs, executors, and

assigns, to abrogate said settlement, and open it for a new and final adjustment.

"J. ARCHER.

"PHILADELPHIA, *November 19th*, 1835."

In the letter to Mr. Bispham, which enclosed this engagement, Mr. Archer, after some remarks explanatory of the account, proceeded as follows:

"If there is any thing in this settlement which does not meet your approbation, I wish you to state it candidly to Wm. Foster, with your reasons, and let him, as your agent, appoint an arbitrator; and my father, as mine, will name another; and let them say what is right and just under all circumstances, embracing the gain allowed you on the shipment of raw silk in settlement, and open the account anew for adjustment."

He repeated the same purpose in another letter, written a month later, from England, and gave his reason for anxiously wishing that the settlement might be closed.

"I wrote," he says, "to our friend Wm. Foster yesterday, about our settlement, and have stated to him that if you were not satisfied with it, I was perfectly willing to leave it to an arbitration; he will show you the letter, if you desire it. I want the business closed, for, should you or I make a finish of our career in this world, it never could be settled with any degree of certainty." (Exhibit D of bill.)

The settlement was finally closed, and satisfaction of its terms acknowledged by the following letter, written by Mr. Bispham, from Valparaiso, on the 18th of August, 1837, and addressed to Mr. Archer at Canton."

"VALPARAISO, *August* 18, 1837.

"JOSEPH ARCHER, esq., *Canton:*

"DEAR SIR: The settlement of the affairs of Archer and Bispham, as made by Mr. William Foster, under date of the 18th of November, 1835, showing a balance in my favor of fourteen thousand eight hundred and eight $\frac{0}{100}$ dollars, is perfectly satisfactory to me, and I do hereby confirm the same; and I also acknowledge to have received said balance in a remittance made to Messrs. Alsop & Co., on my account, in a bill drawn by Messrs. Wetmore & Co., of Canton, dated June 5th, 1836, on Messrs. Morrison, Crider & Co., London, for thirty-five hundred and sixteen pounds eighteen shillings sterling.

"As we are both in possession of a copy of the settlement alluded to, I refer to the same for the endorsement made at foot of that account, and signed by William Foster, respecting any unsettled claims which may be made on said firm of Archer & Bispham, which I also confirm and hold myself responsible for; and intending this letter as entirely exonerating you from any further claims from myself, heirs, or executors,

"I am, yours, truly,

"(Signed) CHAS. BISPHAM."

At the time when the settlement was made between the partners, suits had been brought on all the Mifflin duty bonds, and judgments had been obtained against Mr. Archer severally upon one of them, in which Mr. Foster was a co-surety, and against Mr. Archer, jointly with Mifflin, or jointly with Mifflin and Foster, on all the others.

Mr. Archer died in 1841. Some years afterwards, Mr. Price having succeeded to the executorship under his will, a writ of scire facias was sued out by the United States, on the judgment which had been recovered against Mr. Archer severally, and the amount of it with interest and costs was paid from Mr. Archer's estate. The joint judgment remaining unsatisfied, the United States, in 1843, filed bills in equity against Mr. Price, for the purpose of obtaining payment of them from the assets in his hands. Mr. Price resisted the demand, on the ground that Mifflin, a co-defendant in the judgments, had survived Mr. Archer, and in 1849 the Supreme Court, affirming the decree of this court, dismissed the bills for want of equity.

Upon these facts Mr. Bispham claims in the present suit to receive from Mr. Archer's executor one-half of the amount which was the subject of controversy in the bills which were so dismissed, less the necessary charges.

The case, as we have stated it, is not to be distinguished, at first view, from the ordinary one of a closing settlement between partners on the dissolution of their co-partnership, under which one party paying to the other his estimated share of the profits, and assuming to himself all the known liabilities of the firm, has become, by agreement, the sole owner of the partnership effects. Every such settlement partakes of the character of a compromise, almost a family compromise, and is, therefore, among the last to be disturbed by the action of a court of equity.

Indeed, the case is a stronger one than we often meet with. The settlement here was introduced by a submission to a referee, and an award made after full examination and without apparent mistake of any fact; and that award, acceded to, ratified, carried into full effect, was followed by mutual releases. It cannot be contended that an adjustment so made, in the most perfect good faith, by intelligent parties, and with equal knowledge on both sides, is to be re-opened fourteen years afterwards, by the occurrence of some accidental profit on the one hand, beyond what was estimated, or by a supervening discharge or reduction of a portion of liabilities on the other.

If Mr. Archer had been released in his lifetime from liability on these bonds, we could not have opened the settlement between his partner and himself respecting them, without reviewing all the other items. We must have inquired whether the "profits" for which Mr. Archer made himself liable, according to the estimate of Mr. Foster, did in fact realize the estimated amount; whether Mr. Bispham was, in fact, entitled to share the profits of the shipment made by Mr. Archer in his own name, on the eve of the dissolution, and of a character alien to the "legitimate business" of the firm; and we must have looked for

the special circumstances which could support a charge of compound interest on the debit items of an account, against a charge of simple interest on the credits. And after we had done all this, we should still be at a loss what to do with the item of the duty bonds; for since the partners, by their former settlement, had agreed that Mr. Archer should be responsible for three-fourths of the amount, and Mr. Bispham for only one-fourth, it might well be contended that the discharge from liability should enure to the benefit of each, in proportion to the liability of each upon which it operated; and this the more especially as Mr. Archer's estate had already been forced to pay in full one of the bonds so assumed by him. These are illustrations of the difficulty which would attend the reforming of such a settlement as this; and they vindicate the established rule of equity, that where there has been no fraud and no mistake of fact, the rights of parties shall be allowed to stand as they have themselves defined them.

As to the asserted mistake of law in regard to the liability of Mr. Archer's estate after his decease on the judgments recovered against him jointly with others, which is supposed to derive countenance from the adjudication in Cushman's case, 2 Sumn., 426, it is enough to say that there is not the slightest ground for assuming that the question which came before the Supreme Court, in U. S. vs. Price, in 1850, was in the view of these parties in 1835. And even if it had been, it could have no bearing upon their rights here. In the words of Chancellor Kent, Lyon vs. Richmond, 2 J. C. R., 60, "we have nothing to do with such an inquiry. A subsequent decision of a higher court, in a different case, giving a different exposition of a point of law from the one declared and known when a settlement between parties takes place, cannot have a retrospective effect, and overturn such settlement. The courts do not undertake to relieve parties from their acts and deeds, fairly done on a full knowledge of facts, though under a mistake of the law. Every man is to be charged at his peril with a knowledge of the law. There is no other principle which is safe and practicable in the common intercourse of mankind; and to permit a subsequent judicial decision in any one given case on a point of law to open or annul everything that has been done in other cases of the like kind, for years before, under a different understanding of the law, would lead to the most mischievous consequences. Fortunately for the peace and happiness of society, there is no such pernicious precedent to be found."

The bill, therefore, must be dismissed, unless we can find something in the agreement of the parties which leaves this item of liability upon the duty bonds open to future review. The exhibits bearing upon this point are five; the submission, the award, Mr. Archer's two letters, and Mr. Bispham's ratification and release.

The first of these, the submission, speaks of the difficulty that might be experienced in making a settlement of the accounts of the firm, in case of the death of either of the partners, as the reason why the sub-

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mission has been resolved on; a reason, by the way, not easily reconcileable with the idea that the death of either partner was to furnish occasion for re-opening the settlement when made; and then proceeds to declare that the arbiter's decision shall be "final and binding on all parties."

The next, the award, though different interpretations have been given to it in the argument, seems to us sufficiently clear. It determines that the sum awarded shall be "in liquidation and full settlement of all matters, claims, and demands relating to or growing out of the transactions of the firm, so far as they are now known, ascertained, or believed to exist;" language that cannot be held to exclude a matter which had been so fully detailed as this was in the lines immediately before it; and the remaining words confirm this, for they except from the operation of the settlement only such "liabilities" and "claims" as are "not now known to exist," and "matters of the same character," that is to say, as I suppose, matters not now known to exist, "contingent on the result of pending suits," not of suits finally determined, and no longer in any wise contingent, having been resolved into judgments more than six years before.

Mr. Archer's letters, and his engagement to waive the award if Mr. Bispham desires it, (complainants' exhibit C,) are at least equally unequivocal. They speak of the necessity of closing a settlement during the lifetime of the parties, refer to the award as a final adjustment of all accounts in relation to the late partnership, and in special terms "absolve Mr. Bispham from all claim on these bonds."

After these comes the letter of confirmation, release, and acquittance written by Mr. Bispham at Valparaiso, twenty-one months after the award had been made, and twenty months after he had had the opportunity of examining it while at Philadelphia, "confirming the settlement," admitting his responsibility under the exceptive terms of the award, for any claims which may be made on the former firm, acknowledging the receipt of the sum awarded him, and in conclusion "exonerating" Mr. Archer "from any further claims from himself, his heirs, or executors."

There appears to us nothing in any of these exhibits which should invite a court of equity to declare the settlement not final, as it professes to be; to cancel Mr. Bispham's formal exoneration of Mr. Archer from further claims; and to undertake, after the lapse of years and the death of one of the parties, to readjust an account which he was careful to have settled in his lifetime, because, as he said, "it never could be settled with any degree of certainty afterwards."

Decree.

And now, this tenth day of September, A. D. 1851, this cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, that the bill of the complainant be dismissed, with costs.